FILED
JAN 10 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 617.

AMOS WOODRUFF, Trustee, et al., Plaintiffs in Error,

vs.

THE STATE OF MISSISSIPPI, THE DELTA AND PINE LAND COMPANY, THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILROAD COMPANY, et al., Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILROAD COMPANY, DEFENDANT IN ERROR.

J. HUBLEY ASHTON,
Of Counsel for The Louisville,
New Orleans and Texas
Railroad Company.

Press of McGILL & WALLACE, Washington, D. C.

ture may validate retrospectively the proceedings which it might have authorized in advance.

Nevin v. Baily, 62 Miss., 436.
Cooley on Taxation, 146, n. 1.

The act of March 2nd, 1888, was sustained by the State court, in,

Paxton v. Valley Land Co., 68 Miss., 739.

In no possible view of the case can the validity of the sales made to the Liquidating Levee Board be questioned in this proceeding.

In conclusion, it is respectfully submitted:

First, that this Court has no jurisdiction of the case.

Second, That the decision of the State court as contained in its opinion is correct.

Third The judgment of the State court dismissing the bill, is sustained by the several defences made by the demurrers, and presented in their argument.

The Court is asked to dismiss the case for the want of jurisdiction, or if the cause is considered and reviewed, that the judgment of the State court be affirmed.

FRANK JOHNSTON,
Solicitor for
The Delta and Pine Land Company.

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PLAINTIFFS IN ERROR,

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THE STATE OF MISSISSIPPI, THE DELTA AND PINE LAND COMPANY, THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILROAD COMPANY, ET AL.,
DEFENDANTS IN ERROR.

In Error to the Supreme Court of the State of Mississippi.

Brief for The Louisville, New Orleans and Texas Railroad Company, Defendant in Error.

This is a writ of error to a decree rendered by the Supreme Court of Mississippi, on April 22, 1889, affirming a decree of the Chancery Court of Hinds County, passed January 31, 1889, dismissing a bill exhibited August 17, 1888, by the plaintiffs in error, as holders of certain alleged bonds of the Levee Board of District No. 1, executed in the year 1872, against the State of

Mississippi, its Auditor and Treasurer, the Delta and Pine Land Company, the Louisville, New Orleans and Texas Railroad Company, and N. T. Burroughs, which sought to subject large bodies of lands in the Yazoo-Mississippi Delta, purchased and owned by the three last-named defendants, to the payment of such bonds.

The bonds purported to have been issued by "The Levee Board of the State of Mississippi, District No. 1," in pursuance of and by the authority granted in an Act of the Legislature of the State of Mississippi, approved March 17, 1871, entitled "An Act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described."

The Chancery Court of Hinds County and the Supreme Court of the State concurred in the view that by the necessary legal construction and effect of the Act of March 17, 1871, the Levee Board had no lawful power or authority whatever to issue the bonds held by the plaintiffs in error; that its action in issuing such bonds was *ultra vires;* and that the bonds were thus void *ab initio.* (Woodruff *v.* Mississippi, 66 Miss., 302.)

Upon that ground, and for that reason, without the consideration of any other question, the bill was dismissed by the court of original jurisdiction, and its decree was affirmed by the appellate tribunal.

The defendants in error respectfully maintain that no Federal question was involved in the judgment and decree of the Supreme Court of Mississippi, affirming the decree of the Chancery Court dismissing the bill, and that the writ of error should be dismissed for want of jurisdiction in this Court.

The bill in the record is an extremely and unusually voluminous and multifarious one. Its features and claims are presented with great clearness in the Briefs

prepared by Mr. Johnston, the learned counsel of the Delta and Pine Land Company, one of the defendants in error.

The bill set forth the provisions of the Act of the Legislature of Mississippi, approved March 17, 1871, which created the Levee Board of the State of Mississippi, District No. 1, composed of the counties of De Soto, Tunica, Coahoma, Tallahatchie, and six townships of the County of Sunflower. (Record, pp. 8–14 ; Laws of Mississippi, 1871, p. 37, *et seq.*)

The Levee Board by that Act was granted power to build levees, borrow money, and to that end to issue the bonds of the Board to the amount of one million of dollars, in such sums and denominations, not less than one hundred dollars each, as the Board might prescribe, to be sold at not less than *ten per centum* discount.

The material provisions of the 9th section of the Act authorizing the Board to issue bonds, were as follows :

"Sec. 9. *Be it further enacted*, That for the purposes aforesaid, and to enable them to carry out the purposes of this Act, the said board of levee commissioners shall have power to borrow money, and to that end may issue the bonds of said board to the amount of one million of dollars, in such sums and denominations not less than one hundred dollars each, as the said board may prescribe, which bonds shall be signed by the President, and countersigned by the Treasurer of said Board, and be made payable to order or bearer, in not less than two nor more than ten years after the first day of January, 1871, and shall bear a rate of interest not exceeding eight per cent. per annum, for which interest coupons may be attached, payable at such time and place as the board may contract. Said bonds shall be negotiable as promissory notes or bills of exchange, and may be sold and negotiated in any market in or out of

the State, on the best terms that can be obtained for the same; but in no case shall any of them be negotiated or sold at a greater discount than *ten* per cent."

By section 8 a tax of two *per centum ad valorem* was levied upon the lands in District No. 1 (the lands being placed by *legislative assessment* in two classes at $5.00 and $3.00 per acre respectively,) and this tax was to continue for the period of twelve years for the payment of the debts of the Board.

By Section 12 the lands upon delinquency were to be sold for taxes, and the Board was authorized to purchase at its own sales, and hold the lands thus purchased for the debts of the Board; and the owners had two years (printed in the Act, by mistake, ten years) within which to redeem by the payment of all delinquent taxes of every description.

By Section 13 the Levee Board was authorized after the period of redemption to sell the lands thus purchased for not less than the amount bid by it, together with all accruing taxes, &c., with ten per cent. interest from the dates when due until paid.

The bill alleged that under the Act of March 17, 1871, the Board executed divers bonds of different numbers and amounts, due and payable at different dates up to 1882; and the form of one of them is given. It is dated January 1, 1872, and stipulated as follows:

"One of a series of five hundred bonds of one thousand dollars each, numbered from one to five hundred consecutively, issued by the levee board of the State of Mississippi, District No. 1, in pursuance of and by the authority granted in an Act of the Legislature of the State of Mississippi, approved March 17, 1871, entitled 'An Act to redeem and protect from overflow from the River Mississippi certain bottom lands herein described.'

"Know all men by these presents that the levee board of the State of Mississippi, district No. 1, under

and by authority of the law mentioned in the caption hereof, hereby acknowledge themselves, for value received, indebted to the bearer in the sum of one thousand dollars in gold coin of the United States of America, which said sum the said levee board of the State of Mississippi, district No. 1, for themselves, and their successors, do hereby bind themselves and engage well and truly to pay to the bearer on the first day of January, A. D. 1878, at the banking-house of the National Park Bank, in the City of New York; and the said the levee board of the State of Mississippi, district No. 1, for themselves and their successors, do hereby engage to pay an interest thereon of eight per centum per annum, payable semi-annually on the first days of January and July in each and every year ensuing the date hereof until the maturity and payment of this bond, at the place of payment mentioned in the coupons hereto annexed, upon the delivery of said coupons as they severally become due." (Record, p. 14.)

The form of the coupons was as follows:

"The Levee Board of the State of Mississippi, district No. 1, will pay to the bearer on the first day of January, 1879, at the National Park Bank of New York, twenty ($20) dollars in currency of the United States, being the semi-annual interest on bond No. 52." (Record, pp. 14, 15.)

The bill then averred as follows:

"Which said bonds and coupons were negotiated by said District No. 1 and in course of trade came into the hands of these complainants by delivery. The list of said bonds and coupons held by each of the complainants is herewith filed, marked Exhibits A, B, and C ..... The face of said bonds amounts to about $300,000, and the interest accrued to about the same." (Record, p. 15, folio 13.)

The bill sought to charge with the payment of these supposed bonds large bodies of lands to which, it is shown by the bill, the present defendants in error claim

title paramount, under the first Levee Act of the Legislature of Mississippi, passed December 2, 1858, creating the original Levee District, known subsequently as the Liquidating Levee District (embracing the Counties of De Soto, Tunica, Coahoma, Bolivar, Washington, Issaquena, Yazoo, Sunflower, Tallahatchie, and Panola), the Amendatory Act of Feburary 13, 1867, creating the Board of Liquidating Levee Commissioners for the Mississippi and Yazoo Delta, who were made the successors of the Levee Commissioners of 1858, the decree of the Chancery Court of Hinds County in the equity suit of *Green* v. *Gibbs et al.*, in 1877, for the purpose of enforcing the equitable lien of the bond-creditors of the Liquidating Levee Board, by a sale of the lands purchased and held by the Board as a trust fund for the payment of their bonds, sales made by the Liquidating Levee Board under that decree in the years 1881 and 1882, and the several Acts of the Legislature of Mississippi, approved March 14, 1884, and March 2, 1888, respectively, for the protection of the rights of the purchasers of lands in the Mississippi and Yazoo Delta under the decree in the Green suit.

The provisions of the first Levee Act of December 2, 1858, creating the original Levee District, and the amendatory Act of February 13, 1867, called the Liquidating Levee Act, are referred to in the bill. (Rec., pp. 2–7.)

Under the Act of 1867, the then existing debt of the original Levee District was compromised and readjusted by the abatement of one-third of it, and the issue of *new bonds* for the balance of the entire debt upon the trusts and securities provided by that Act ; one of them being the provision, in section 13, that "all the lands acquired by this Board under the provisions of this

Act, or which belonged to the general Board of Levee Commissioners as aforesaid (under the Act of 1858) shall be *exempt from State taxation for levee purposes or otherwise until the same shall be sold or disposed of by this Board.*" (Rec., p. 7.)

The Acts of December 2, 1858, and February 13, 1867, together with the Act of February 1, 1877, which attempted to repudiate the re-adjustment of the debt of the Liquidating Leeve District under the Act of 1867, were the subject of the conclusive adjudication of the Supreme Court of Mississippi in the *Green* case, which came before that Court, in 1877, upon appeal from the decision of the Chancery Court of Hinds County. (Green *v.* Gibbs, 54 Miss., 592.)

The Supreme Court, in that case, affirming the decision of the Chancery Court, adjudged that "the Act of February 13, 1867, became a contract between the State of Mississippi and the authorities of the Levee District, on the one hand, and the holders of the new bonds, issued under that Act, on the other, which it was not competent for either party thereafter materially to modify without the consent of the other;" that the security of the bondholders, under the Act of 1867, "consisted of the *tax which was fastened upon the land* '*until*' (in the language of the Act) '*a sufficient sum is collected with which to pay off all the debts*,' *and of the lands which should be forfeited to the Commissioners for non-payment of the tax;*" that "*the tax, and the lands forfeited thereunder, alike became a fund pledged by the Act for the redemption of the new bonds*, and it was, therefore, no more competent for the Legislature to *repeal the tax, or to divert the lands*, than it was for them in express terms to repudiate the bonds;" and that the Chancery Court of Hinds County, upon the bill filed, in that case, by the holders of the Liquidating

Levee Bonds, issued under the Act of February 13, 1867, and the Act of May 13, 1871, extending the time for the presentation of claims, under the Act of 1867, had the right to subject the lands, which had from time to time become forfeited to the Liquidating Levee Commissioners, to the payment of those bonds.

After the decision of the Supreme Court of Mississippi, the lands in the Yazoo Delta, which had been purchased by the Liquidating Levee Board, at levee tax sales, in 1868, 1869, and 1870, that is to say, prior to the passage of the Act of March 17, 1871, were sold by the Board under the decree of the Chancery Court of Hinds County in *Green* v. *Gibbs*. The sales were made in 1881 and 1882. (Rec., pp. 33, 34, 36, 37.)

The Supreme Court, in *Gibbs* vs. *Green*, had said :

"That the Levee Commissioners and their present successors, the Auditor and State Treasurer, are vested with power to sell the lands, does not divest the Court of Chancery of its inherent jurisdiction to administer a trust fund for the benefit and upon the application of the *cestuis que trust*. In making the sales, the Court can employ the services of the trustees designated by law, or of its own Commissioner, as it may deem most advantageous to all concerned. It will proceed, as far as may be, in accordance with the provisions of the act of 1867 and of the several acts amendatory thereof, disregarding and treating as *unwritten all acts and parts of acts which were intended or had the effect of withdrawing the lands from the ownership of the levee commissioners and their successors, and thereby defeating the claims of the bond-holders.*" (54 Miss., 610.)

Under the decree in the Green case a large quantity of the lands in the Delta forfeited for non-payment of taxes, was sold by the Liquidating Levee Commissioners, in 1882, to the Vicksburg and Memphis Railroad Company, and the lands were afterwards acquired by

succession by the Louisville, New Orleans and Texas Railroad Company, one of the defendants in error here. (Rec. pp. 33, 34 ; pp. 30, 31.)

Under the Act of the Legislature of Mississippi, approved March 2, 1888, entitled "*An Act to quiet and settle the title to certain lands in the Yazoo Delta, which were sold by the Commissioners of the Chancery Court for the First District of Hinds County, in the case of Joshua Green and others against Hemingway and Gibbs, treasurer and auditor, and ex-officio Liquidating Levee Commissioners,*" deeds conveying the State's claim of title were executed respectively to the Louisville, New Orleans and Texas Railroad Company, and the other defendants in error in this case. (Act of 1888, Rec., pp. 29, 30, 31 ; pp. 39, 40.)

It does not appear from the bill that the State had any claim or source of title other than certain sales to it under what is known as the "*Abatement Act*" of February, 1875, mentioned in the bill, which were subsequent, of course, to the sales for taxes to the Liquidating Levee Commissioners in 1868, 1869, and 1870. (Rec., p. 38.)

It thus appears by the bill that the defendants in error claim to have legal titles to the lands derived through the Board of Liquidating Levee Commissioners, under the Act of February 13, 1867, which are paramount and superior to any lien or equity claimed by the plaintiffs in error.

The theory of the bill appears to be that the lands purchased by the Liquidating Levee Board, in 1868, 1869 and 1870, in trust for the creditors who accepted the new bonds, under the Act of February 13, 1867, were not exempt from taxation, but were liable to be sold for the

taxes of Levee Board No. 1, under the Act of March 17, 1871, and that the titles acquired by the defendants in error through the Liquidating Levee sales, under the decree in the suit of *Green* v. *Gibbs*, are subordinate to an alleged lien for taxes due District No. 1, or that the titles alleged to have been acquired by the Commissioners of District No. 1, under its sales from 1872 to 1876, are paramount.

The bill, also, contended that a part of the bonds of the Liquidating Levee Board were invalid, for the reason that they were issued under an extension of time for the acceptance of the compromise offered to the creditors of the Liquidating Levee Board, granted by several special Acts (May 13, 1871, and April 15, 1872), passed subsequently to the Act of February 13, 1867, which, it is claimed were "*ultra vires* of the Legislature of Mississippi." (Rec., pp. 37, 46, 47.)

It also insisted that the "abatement" Act of February 1, 1875, abating certain State, county and levee taxes in District No. 1 prior to 1874, the Act of April 11, 1876, constituting the Auditor and Treasurer of the State *ex officio* Commissioners for District No. 1, and the Act of March 5, 1884, abolishing the District, impaired the obligation of the contracts of the Levee Board of that District. (Rec., pp. 38, 41, 42.)

THE DECISIONS OF THE STATE COURTS.

All of the parties defendant to this suit demurred to the bill, among other reasons, upon the ground that the supposed bonds on which the suit was based, calling for the payment of the amounts acknowledged expressly and exclusively "*in gold coin of the United States*," were, under the provisions of the Act of March 17, 1871, and by the true construction of those provisions, *ultra vires* of the Board of Commissioners of Levee District No. 1, and, therefore, invalid and void. (De-

murrers, State of Mississippi, Record, p. 61; Auditor and Treasurer, *Ib.*, p. 62; Delta and Pine Land Co., *Ib.*, p. 64; The Louisville, New Orleans, and Texas R. R. Co., *Ib.*, 67; N. T. Burroughs, *Ib.*, p. 65.)

On January 31, 1889, the Chancery Court rendered its decree sustaining the demurrers of the defendants, and dismissing the bill. (Rec., p. 72.)

The opinion of the Chancellor shows that the bill was dismissed by him upon the sole ground that the Commissioners exceeded their lawful authority, under the Act of March 17, 1871, in making the bonds payable exclusively in gold coin, and that the "bonds" were, therefore, invalid. (Rec., pp. 69, 70.)

The Chancellor said:

"These bonds upon their face show that they were to be paid in gold coin of the United States. It is well settled that corporations can not do anything except by express authority, or by implication only when necessary to carry out the powers expressly conferred. There was no express authority in this case to the Levee Board of District No. 1 to issue bonds payable in gold coin, and it no where appears that it was necessary to issue gold bonds in order to carry out the objects of the power to borrow money, or to do aught else required to be done by the law.

"The question is, *not* to what *extent* have the Levee Commissioners *exceeded their authority; but have they exceeded it? I think they have.* Without expressing any opinion on the other grounds of the demurrers, I think, for the above reasons, they should be sustained, and a decree will be made accordingly."

On March 29, 1889, the complainants filed in the Supreme Court of the State their "*assignment of errors*" upon their appeal from the decree of the Chancery Court dismissing the bill. (Rec., p. 74.)

The assignment of errors is general and formal, to the effect that the Chancery Court erred in sustaining the demurrers and dismissing the bill, and it is not pre-

tended therein that the *decision of the Chancery Court involved the determination or consideration of any Federal question.*

No error is assigned to any decision of the Chancery Court upon any such question.

On April 22, 1889, the Supreme Court rendered its decree affirming the decree of the Chancery Court dismissing the bill. (Rec., p. 75.)

The opinion of the Court, delivered by Campbell, J., shows that the decree proceeded upon the ground that the action of the Levee Board in issuing the bonds was *ultra vires*, and that the bonds as issued and payable expressly and exclusively "in gold coin" were absolutely void *ab initio.*

The learned Court said :

"In authorizing the issuance of bonds for one million of dollars, and in the use of the term 'money,' the Legislature must be supposed to have meant, in the Act cited, that money which constituted the basis of the general business of the country and was a legal tender for the payment of debts. Therefore, there was *no authority in the Act for the issuance of bonds payable in 'gold coin,'* and they were *void for want of authority in their issuance.* This is a matter of substance involving *a departure in a most material feature from the Act authorizing bonds to be issued, and rendered them void from the beginning. This is decisive of this case, and renders unnecessary, if not improper, the consideration of any other question.*" (Rec., p. 75.)

Assignment of Errors.

In this Court it is assigned for error :—

1. That the Supreme Court of Mississippi erred in deciding that the bonds or contracts, executed under the Act of March 17, 1871, were void and of no obligation, because made payable in "dollars in gold coin of the United States of America," thereby by such decision impairing the obligation of said contracts.

2. That under the Constitution and laws of the United States "gold coin" is and was in 1871 "money" and a legal "dollar," and said decision annuls the said Constitution and laws, by holding that a contract executed under authority of a State statute to borrow "money" and issue bonds payable in "dollars" was illegal because payable in "dollars in gold coin of the United States of America."

3. That by its decision the Court below by such construction of the Act of March 17, 1871 and the said bonds, committed error in holding, in effect, that the State of Mississippi had power to pass a law by which "anything but gold or silver coin" could be "a tender in payment of debts," contrary to Section 10, Article 1, of the Constitution of the United States.

4. That the Court below erred in affirming the decree of the Chancery Court of Hinds County, wherein and by which Court the above assigned errors were likewise committed.

At October Term, 1890, the defendants in error filed motions to dismiss the writ of error for want of jurisdiction in this Court. The motions were postponed by the Court for hearing upon the present argument.

The defendants in error respectfully submit:

First. That the decision of the Supreme Court of Mississippi did not involve the determination or consideration of any Federal question.

Second. That if a Federal question was necessarily involved in the decision of that Court, the question was correctly determined.

FIRST.

The Supreme Court of Mississippi decided the case upon a ground not involving a Federal question, and broad enough and sufficient to sustain its decree without reference to or requiring the consideration of any such question.

1. This Court can not entertain jurisdiction of the case unless there was drawn in question in the Supreme Court of Mississippi the validity of a Statute of, or an authority exercised under, the United States, and the decision was against their validity, *or* unless there was drawn in question in that Court the validity of a Statute of, or an authority exercised under, the State of Mississippi, on the ground of such statute or authority being repugnant to the Constitution or laws of the United States, and that Court decided in favor of its validity, *or* unless a title, right, privilege, or immunity under the Constitution or a treaty or statute of, or commission held or authority exercised under, the United States, was specially set up or claimed under such Constitution, treaty, statute, commission or authority, and a decision was rendered by that Court against such title, right, privilege or immunity. (Rev. Stats., § 709.)

It is settled that the petition for the writ of error forms no part of the record upon which action can be taken by this Court, and that the opinion delivered by the Court below and sent up with the transcript, may be examined here to ascertain the ground of the decree of the State Court. (Code of Mississippi, 1880, section 1413; Leeper *v.* Texas, 139 U. S., 467; Kreiger *v.* Shelby R. R. Co., 125 U. S., 44; Butler *v.* Gage, 138 U. S., 52; O'Neil *v.* Vermont, 144 U. S., 323, 335.)

It is also well settled, by authorities too numerous for citation, that this Court will not take jurisdiction of

a writ of error to a State Court, under section 709 of the Revised Statutes, if it appear either that the decision of the State Court was made upon principles or rules of general jurisprudence, or that the case was disposed of upon a ground broad enough to maintain its judgment without considering a Federal question, even though this Court might well think the position of the State Court an unsound one.

Many of the adjudged cases upon this subject are cited in the Briefs for the defendants in error upon the motion to dismiss.

In connection with those authorities we refer to the following more recent cases: Hopkins *v.* McClure, 133 U. S., 380; San Francisco *v.* Itsell, 133 U. S., 65; Johnson *v.* Risk, 137 U. S., 300, 307; Butler *v.* Gage, 138 U. S., 52, 58; Cook Co. *v.* Calumet &c. Canal Co., 138 U. S., 635, 651; Leeper *v.* Texas, 139 U. S., 467; Wood Co. *v.* Skinner, 139 U. S., 293; Henderson Bridge Co. *v.* Henderson City, 141 U. S., 679; New Orleans *v.* N. O. Water Co., 142 U. S. 79; Delaware City Nav. Co. *v.* Reybold, 142 U. S., 643; Hammond *v.* Johnston, 142 U. S., 73; St. Paul &c. R. R. Co. *v.* Todd Co., 142 U. S., 282, 286; Winona &c. R. R. Co. *v.* Plainview, 143 U. S., 391, 393; Haley *v.* Breeze, 144 U. S., 132; Quincy &c. R. R. Co. *v.* Harris, 144 U. S., 210; O'Neil *v* Vermont, 144 U. S., 324, 326.

In several of these recent cases, the Court reaffirmed the principle and the decisions which established it, that in the exercise of its appellate jurisdiction, under section 709, the construction placed on local laws by the highest court of a State is controlling in this Court.

In *Cook Co.* v. *Calumet &c. Canal Co.* (138 U. S., 651), the Court found that the judgment of the State Court proceeded wholly upon the terms and conditions of the grant of the State to the county by the Act of

1852, as amended by the Act of 1854; and it said, speaking by the Chief Justice, "*this construction by the State Court of the laws of the State is controlling in the premises. Gormley* v. *Clark*, 134 U. S., 338, *and cases cited.*"

In *Henderson Bridge Co.* v. *Henderson City* (141 U. S., 689), the Court speaking by Mr. Justice Blatchford, said: "The opinion of the State Court is based wholly upon the ground that the proper interpretation of the Ordinance of February, 1882, was that the Bridge Company voluntarily agreed that the Bridge should be liable to taxation. This does not involve a Federal question, and is broad enough to dispose of the case, without reference to any Federal question. *This Court can not review the construction which was given to the ordinance, as a contract, by the State Court.*"

In *Quincy &c. R. R. Co.* v. *Harris* (144 U. S., 210), the Court expressly adjudged that "no Federal question is involved when the Supreme Court of a State decides that a municipal corporation within the State had no *power, under the Constitution and laws of the State, to make the contracts sued on.*"

Associated with this general principle, in the recent decisions, is the doctrine that the constitutional protection against the impairment of contract obligations by State legislation, can be invoked, in this Court, only when "the State Court has given effect to a legislative enactment which impairs the obligation of a prior contract." (Winona &c. R. R. Co. *v.* Plainview, 143 U. S., 373; St. Paul &c. R. R. Co. *v.* Todd Co., 142 U. S., 286; both cases affirming *New Orleans Waterworks Co.* v. *Louisiana Sugar Refining Co.*, 125 U. S., 18, 30.)

In *Winona &c. Railway Co.* v. *Plainview* (143 U. S., 392) Mr. Justice Blatchford said:

"The Act of 1881 had no bearing upon the question of the validity of the bonds, and the State Court gave to that Act no effect on that question; so that those cases fall within the principle of *N. O. Water Co.* v. *Refining Co.*, because *the State Court decided them just as if the Act of March 3, 1881, had not been passed.*"

In *St. Paul, &c. R. R. Co.* v. *Todd County* (142 U. S., 286), the Court ruled that a decision of the Supreme Court of a State, sustaining as valid a statutory contract of the State exempting the property of a railway Company from taxation, but deciding that a certain class of property did not come within the terms of the exemption, is not an impairment of the contract by a law of the State, and is not subject to review in error here.

In *New Orleans* v. *N. O. Water Works Co.* (142 U. S., 79, 88), it was adjudged that the City of New Orleans could not claim that the contract involved between the City of New Orleans and the Water Works Company was impaired by subsequent State legislation, because the *contract itself* was declared by the Supreme Court of Louisiana to be *ultra vires.* Mr. Justice Brown, speaking for the Court in that case, said:

"If it appear either that the decision of the State Court was made upon rules of general jurisprudence, or that the case was disposed of upon other grounds, broad enough in themselves to sustain the judgment without considering the Federal question, and that such question was not necessarily involved, the jurisdiction of this Court will not attach."

The principle was again emphatically declared in the more recent case of *O'Neil* v. *Vermont* (144 U. S., 336).

2. The record, in this case, shows affirmatively that the Supreme Court of Mississippi did not decide in favor of the validity of any statute of Mississippi, or of any authority exercised under that State, drawn in

question by the plaintiffs in error, as repugnant to the Constitution or laws of the United States.

And most clearly does it appear that no title, right, privilege, or immunity under the Constitution, or a statute of, or authority exercised under the United States, was specially set up or claimed by the plaintiffs in error, under such Constitution, statute or authority, and no decision was rendered against such title, right, privilege or immunity, by the Supreme Court of Mississippi.

(*a*) The Acts of the Legislature of Mississippi passed subsequently to the Act of March 17, 1871, alleged in the bill to be in violation of the Constitution, had no bearing upon the question of the validity of the bonds sued on, and the State Court gave to those Acts no effect whatever on that question, and the State Court decided the case just as if those Acts had never been passed ; so that the case in that respect falls directly within the principle of *N. O. Water Works Co.* v. *La. Sugar Refining Co.* (125 U. S., 18), and the cases of *St. Paul &c. R. R. Co.* v. *Todd County* (142 U. S., 286), and *Winona &c. Railway* v. *Plainview* (143 U. S., 372).

The judgment of the Court delivered by Mr. Justice Gray in *N. O. Water Works Co.* v. *La. Sugar Refining Co.*, is, perhaps, the most thorough exposition in the books of the doctrine that the prohibition against State impairment of the obligation of contracts is "aimed at the *legislative power* of the State, and not at the *decisions* of its Courts," and that "this Court has no jurisdiction to review a judgment of the highest Court of a State, on the ground that the obligation of a contract has been impaired, unless some legislative act of the State has been upheld by the judgment sought to be reviewed."

The State Court held in this case, that the so-called "bonds" were simply *nullities*, and no effect was given to any State statute drawn in question as affecting the obligations of any existing contracts.

The decision was that there were *no* contracts with obligations *to be* impaired by State legislation.

The idea that that *decision* impaired the obligation of a "*contract*," is a legal solecism.

(*b*) It appears affirmatively that the decree of the State Court proceeded wholly upon the provisions of the Act of March 17, 1871, under which the bonds purported to be issued, and the determination that the municipal corporation known as Levee Board, No. 1, had no lawful *power*, under the Act, to make the alleged contracts sued on. That question is not a Federal question : it does not arise under the Constitution of the United States, or of any law or treaty made in pursuance thereof. It is not a question, therefore, which, under the present writ of error, this Court can review. (Quincy &c. R. R. Co. *v.* Harris, 144 U. S., 210; San Francisco *v.* Itsell, 133 U. S., 66; De Saussure *v.* Gaillard, 127 U. S., 233.) In the language of the Court, speaking by Mr. Justice Matthews, in *De Saussure* v. *Gaillard*, the Court is "not authorized to inquire into the grounds and reasons upon which the Supreme Court of the State proceeded in its construction of that statute."

(*c*) The whole question upon the construction of the Act of 1871 was whether or not the Legislature *intended* to confer on the Board the power to issue bonds payable expressly in gold coin, at a time when gold coin was at a high premium, and legal tender treasury notes had become, as this Court had said, "*the universal measure of values.*" (Legal Tender Cases, 12 Wall., 530.)

What the Legislature intended was a question of legal *fact* for the exclusive determination of the State tribunals.

In 1871 and 1872 there were two kinds of money and two kinds of dollars essentially different in their nature, but equally lawful, though not exchangeable in the market according to their legal or nominal values. (Trebilcock *v.* Wilson, 12 Wall., 695, 696, 697.)

The Court below simply decided that it was not the *intention* or purpose of the Legislature to authorize the Board, and the Board, therefore, was not empowered by the Legislature, to issue bonds payable by their terms in one of the two kinds of lawful money of the country, *viz.*, gold dollars, and that the action of the Board in issuing bonds payable expressly in that particular kind of money, was the usurpation by it of a power not granted by the Legislature.

The one million of gold coin dollars, contracted to be paid by the Board, created a debt, then equal in legal tender notes to *at least eleven hundred thousand dollars.*

It was thus adjudged that the bonds were not valid obligations of the Board when they were issued according to the law of the State of Mississippi.

That determination involved the decision of questions arising upon the construction of the local statute, and under the municipal law of the State, only, in no wise depending upon the Constitution or Statutes of the United States.

The reiterated assertion, in the Brief for the Plaintiffs in Error, that the State Court decided that "gold coin," at that time, was not "money" or "dollars," of the United States, within the meaning of the legal tender Acts, is erroneous.

The decision simply was that gold dollars were not the *kind* of money of the United States in which the Legislature designed and intended that the bonds authorized to be issued should by their express terms be made payable, and that the Board violated their charter, and usurped a power not granted to them, when they made and issued bonds expressly payable in that description of money.

(*d*) It would seem to be also supposed by the plaintiffs in error that the Court below in giving the *reasons* upon which it proceeded in its construction of the Act of 1871, had occasion to determine that contracts, in 1872, made payable specially in gold coin were solvable only in that kind of money; but that was not a matter which was or could be adjudged upon the question as to the meaning and intention of the charter of the Levee Board, and of the authority of the Board under the charter to issue the bonds, which was the only question adjudged by the Court below.

What the Court adjudged was that there was no authority in the Act of 1871 to issue the bonds, and that they were, therefore, void in their *inception;* and that was the *only* thing adjudged in the cause.

Whether valid contracts made at that time to pay gold coin could be satisfied by payment of legal tender notes, was not a matter, therefore, which could pass *in rem judicatam* in the case.

No question as to the kind of *money* in which the "bonds" would be solvable, if valid, could be adjudged until they were held to be valid.

(*e*) But it is clear, moreover, that the expression of the view of the Court, as an abstract proposition, that contracts were solvable only in the kind of money in which they were stipulated to be paid, in construing the State statute, was not a decision against a right,

title, privilege, or immunity specially set up or claimed by the plaintiffs in error under the Constitution or a Statute of, or an authority exercised under, the United States, nor against the validity of any such right, title, privilege, or immunity. (Cook County *v.* Calumet &c. Co., 138 U. S., 654.)

In that case the State Court expressed its opinion against the validity of the cancellation of the entry in the Land Office ; but this Court, speaking by the learned Chief Justice, said : "But the expression of this view in construing the language of the State statute was not a decision against a title specially set up or claimed under an authority exercised under the United States, nor against the validity of such an authority."

The principle stated by the Chief Justice is entirely applicable to the present case.

(*f*) As has been already stated, the assignment of errors in the Supreme Court of the State to the decree of the Chancery Court, contained no allusion to any right, title, privilege, or immunity specially set up or claimed by the parties under the Constitution or laws of the United States, or any decision against such right, title, privilege, or immunity by the Chancery Court.

It was, in fact, admitted and contended, in the Court below, by the counsel for the plaintiffs in error, that "*the Legal Tender Act did not change the rule that contracts payable in gold should be so paid* (Woodruff *v.* Mississippi, 66 Miss., 302.)

3. It is thus clear that no Federal question was decided by the Supreme Court of Mississippi against the plaintiffs in error, and that this Court is without jurisdiction to review the judgment.

SECOND.

If it should be held that a Federal question was necessarily involved in the decision of the Court below, it was correctly decided.

1. The plaintiffs in error claimed a contract purporting to be made, not under Federal authority, but under a special authority granted to a local municipal board under a State statute, and the decision was based upon a local statute, and the proper construction of that statute. The validity of the asserted contract, in its inception, under the special authority given to the Board by the local statute, was the only question determined.

Whether a valid gold contract is payable in legal tender treasury notes is another and different question.

That question *could not arise until and unless the bonds were held to be valid obligations, under the State statute, between the Board and the holders of the bonds.*

This learned Court held in *Bronson* v. *Rodes* (7 Wall., 229) that a contract could only be discharged according to its terms, and that special gold contracts are solvable alone in gold coin. We do not understand that this doctrine was changed or modified by the decisions in the *Legal Tender Cases* of December Term 1870, and October Term 1883.

The reasoning in the opinion delivered by Chief-Justice Chase, in *Bronson* v. *Rodes*, to the effect that special gold contracts are enforceable as such, appears to be unanswerable.

The Court, speaking by Mr. Justice Field, in *Trebilcock* v. *Wilson* (12 Wall., 697), declared that "if we look to the Act of 1862, in the light of the cotemporaneous and subsequent legislation of Congress, we shall find

little difficulty in holding that it was not intended to interfere in any respect with existing or subsequent contracts payable by their express terms in specie."

Mr. Justice Gray, speaking for the Court, in the *Legal Tender Case* (110 U. S., 449), said: "A contract to pay a certain sum of money, without any stipulation as to the *kind* of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made." And the following language of Mr. Justice Strong, in delivering the opinion of the Court, in the *Legal Tender Cases* (12 Wall., 549), is quoted with approval: "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the Government over the currency, whatever that power may be, and the obligation of the parties is, therefore, assumed with reference to that power."

The doctrine of Bronson *v.* Rodes as to specific contracts is incorporated in the Statutes of California and Nevada, and perhaps other States. (See Carpentier *v.* Atherton, 25 Cal., 564; Lane *v.* Gluckauf, 28 *Ib.*, 289; Linn *v.* Wilson, 4 Nevada, 462; Wells, Fargo & Co. *v.* Van Sickle, 6 *Ib.*, 47.)

The Supreme Court of California in Carpentier *v.* Atherton adjudged that the Act of the Legislature of the State of April 27, 1863, called the "*Specific Contract Act*," providing for the enforcement in terms of contracts made payable in specific kinds of money or currency, is not in conflict with the "*Legal Tender Acts*," and only affords a more complete remedy through the rendition and enforcement of judgments payable in the kind of money specified in the contracts or obligations on which they are rendered.

In Milliken *v.* Sloat (1 Nevada), a law of the State authorizing judgments to be rendered for coin when

specified in a contract or its equivalent in value, was held invalid, as in conflict with the "*Legal Tender Acts.*" This was overruled by *Linn* v. *Wilson* (4 Nevada, 462). It was said that the first decision proceeded on the theory that the State statute restricted the operation of the "Legal Tender Acts," by confining treasury notes to contracts payable generally, and assuming that the Federal Government desired all debts paid in treasury notes. In the second case it was held that it was not the intention of the Statute to further that particular idea, or to enforce the use of one kind of money rather than the other. There is nothing against the making of gold contracts in the "Legal Tender Acts," and Congress, by Act of March 3, 1863 (12 Stats., 119), authorized contracts for the delivery of gold. (Citing and approving Carpentier *v.* Atherton, 25 Cal., 564.)

In *Wells, Fargo & Co.* v. *Van Sickle* (6 Nevada, 47), it was held that a special State statute, authorizing a court to enter judgments on special gold contracts for gold dollars, or their equivalent, was not necessary to confer the power, and that the court had such power in the absence of such a remedial statute.

2. But the subject of legal tender, as we have said, is not brought into view by the present writ of error, and is alluded to here incidentally only because it is referred to in the Brief for the plaintiffs in error.

The State Court assumed, in construing the Act of 1871, and defining the powers of the Board, under its provisions, that gold contracts were payable in gold, and this was considered among other things as illustrating the intention of the framers of the local Statute, and having a bearing upon the proper construction of the Statute; but if the view expressed were erroneous it would make no possible difference as far as regards the character of the decision as one concerning the con-

struction of the State statute, or the jurisdiction of this Court to review the decision of the State Court on a purely local question.

The question was one of power and agency, and even conceding that gold contracts were solvable in paper money, still the decision of the State Court would rest upon the construction of the local statute to the effect that the alleged contracts as expressed were not in conformity to the terms and authority of the local law.

A contract to pay in gold coin then at a premium, carried the moral obligation, at least, to pay according to the terms of the contract, and, therefore, independently of any and all question as to what is legal tender, the decision of the State Court may well repose in any view upon the consideration that such a special gold contract was not in conformity with the intention of the local statute which gave the Board authority to issue bonds, upon a just and proper construction of the terms and provisions of that Statute, agreeably to the principles of the law of the State of Mississippi.

The conclusion respectfully submitted is, that the decision of the Court below did not involve a Federal question reviewable in this Court, and if the decision were subject to review in error here, it would be affirmed agreeably to the settled principle of our jurisprudence that the construction placed on local laws by the highest Court of a State will be followed by this tribunal.

J. HUBLEY ASHTON,
Of Counsel for the Louisville, New Orleans and Texas Railway Company.

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Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1561.

AMOS WOODRUFF, Trustee, et al.,

vs.

THE STATE OF MISSISSIPPI et al.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF IN REPLY FOR THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY, ONE OF THE DEFENDANTS IN ERROR.

J. HUBLEY ASHTON,
Of Counsel, with Mr. Harris, for
The Louisville, New Orleans, and
Texas Railway Company.

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PRINTERS.
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IN THE

Supreme Court of the United States.

October Term, 1890. No. 1561.

AMOS WOODRUFF, TRUSTEE, *et al.*,

vs.

THE STATE OF MISSISSIPPI *et al.*

In error to the Supreme Court of the State of Mississippi.

Motion to Dismiss for Want of Jurisdiction.

BRIEF IN REPLY FOR THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY, ONE OF THE DEFENDANTS IN ERROR.

The undersigned, of counsel, with Mr. Harris, for the Louisville, New Orleans & Texas Railway Company, desires to submit a few observations in reply to the propositions maintained in the brief of the learned counsel for the plaintiffs in error in opposition to the present motion.

First.

The first proposition, on the part of the plaintiffs in error, is, that the decision of the State Court impaired the obligation of the contract.

The argument in support of this proposition, submitted by the learned counsel in their brief, appears to maintain that the decision of the Supreme Court of Mississippi, sought to be reviewed, constitutes a "law," within the meaning of section 10 of article I of the Constitution of the United States, which ordains that "no State shall pass any law impairing the obligation of contracts." (Brief for plaintiffs in error, pp. 9–10.)

This Court, however, has conclusively adjudged that the constitutional prohibition is aimed at the legislative power of the State, and not at the decisions of its Courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals, and that the law of the State to which the prohibition refers must be one enacted after the making of the contract, the obligation of which is claimed to be impaired.

N. O. Waterworks *v.* La. Sugar Co., 125 U. S., 30–38.
Kreiger *v.* Shelby R. R. Co., 125 U. S., 46.
Lehigh Water Co. *v.* Easton, 121 U. S., 391, 392.
Chicago Life Ins. Co. *v.* Needles, 113 U. S., 574.
University *v.* People, 99 U. S., 309.
Delmas *v.* Insurance Company, 14 Wall., 661.
Knox *v.* Exchange Bank, 12 Wall., 379.
Railroad Company *v.* McClure, 10 Wall., 511.
Railroad Company *v.* Rock, 4 Wall., 177.

The careful analysis at the close of the learned opinion of the Court, delivered by Mr. Justice Gray, in the case

of *The New Orleans Waterworks* v. *The Louisiana Sugar Refining Co.*, 125 U.S., 38, distinctly implies, what was expressly declared by the Court, speaking by Mr. Justice Harlan, in the previous case of *Lehigh Water Co.* v. *Easton*, 121 U. S., 391, that the alleged unconstitutional law must have been enacted subsequently to the making of the contract in suit, in order to originate a question for this Court under the clause of the Constitution protecting the obligation of contracts against impairment by State legislation.

The Court there says:

"When the State Court decides against a right claimed under a contract, and there was no law *subsequent* to the contract, this Court clearly has no jurisdiction. When the existence and construction of a contract are undisputed, and the State Court upholds a subsequent law, on the ground that it did not impair the obligation of the admitted contract, it is equally clear that this Court has jurisdiction. When the State Court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this Court has jurisdiction to consider the true construction of the supposed contract, and, if it is of opinion that it did not confer the rights affirmed by the State Court, and therefore its obligation was not impaired by the subsequent law, may on that ground affirm the judgment. So, when the State Court upholds the subsequent law, on the ground that the contract did not confer the right claimed, this Court may inquire whether the supposed contract did give the right, because, if it did, the subsequent law cannot be upheld. But when the State Court gives no effect to the subsequent law, but decides, on grounds independent of that law, that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed, and this Court has no jurisdiction."

In *Lehigh Water Co.* v. *Easton*, 121 U. S., 391, Mr. Justice Harlan, speaking for the Court, said that the prohibition of laws impairing the obligation of contracts

necessarily refers to a law enacted after the contract, the obligation of which is claimed to be impaired.

The principle declared by the Court in *Gelpcke* v. *Dubuque*, 1 Wall., 206, which seems to be relied upon by the learned counsel for the plaintiffs in error, has no application to the present case.

Gelpcke v. *Dubuque* came here under the 22d section of the Judiciary Act of 1789, and this Court was not restricted to the consideration of Federal questions, but had jurisdiction to determine the whole case.

The difference in the extent of the jurisdiction of this Court on writ of error to the highest Court of a State, and on writ of error or appeal in a case originating in an inferior court of the United States, as affected by the ground of the decision of the Court below, is fully discussed in the opinion delivered by Mr. Justice Gray in *N. O. Water Works* v. *La. Sugar Co.*, and was clearly pointed out by Mr. Justice Swayne, who delivered the opinion of the Court in *Gelpcke* v. *Dubuque*, in the subsequent case of *Railroad Company* v. *McClure*, 10 Wall., 511.

The Supreme Court of Iowa, in *Railroad Co.* v. *McClure*, 10 Wall., 511, had held that the county bonds there involved, were invalid upon the ground that they were unauthorized and were forbidden by the constitution of the State, and the case was brought here upon the alleged ground that this decision violated the constitutional prohibition against State impairment of contracts.

The argument, on the part of the plaintiff in error, was that at the time when the bonds were issued, the constitution of the State, now construed in the decision below so as *not* to authorize the issue by counties of railroad bonds, had been construed so as to authorize

such issues, and that the later interpretation, adverse to the validity of the bonds, impaired the obligation of a contract, as this Court had decided in *Gelpcke* v. *City of Dubuque*, 11 Wall., 175.

But this Court dismissed the case for want of jurisdiction; and, speaking by Mr. Justice Swayne, said:

"The question of the validity of the bonds is not one of Federal jurisdiction. The Constitution of the United States declares that no State shall pass a law 'impairing the obligation of contracts.' The constitution of a State is undoubtedly a law within the meaning of this prohibition. A State can no more do what is forbidden by one than by the other. There is the same impediment in the way of both. But the State has passed no law upon the subject, and the constitution of the State, which, as construed by the Supreme Court of the State, has worked the result complained of, was in force when the bonds were issued. The 25th section of the Judiciary Act of 1789 specifies the questions of which we can take cognizance in this class of cases, and expressly excludes all others from our consideration. It is clear that the question before us is not within the affirmative category.

"If the case had been brought up from the Circuit Court under the 22d section of the Judiciary Act, this question and all others arising on the record, would have been open for examination. The 25th section is more limited in its operation."

It is clear, therefore, that the judgment of the Court below, in the present case, is not reviewable by this Court under the clause of the Constitution protecting the obligation of contracts from impairment by State legislation, and under the existing statutes defining and regulating the jurisdiction of this tribunal.

The Court, it may be observed, has expressly adjudged that where the obligation of a contract is claimed to be impaired by subsequent laws of the State, and the Court

can see from the opinion of the State Court that it "based its judgment upon the construction and effect of the *earlier* statutes, and upon grounds which would be equally controlling if the *later* acts had not been passed," the writ of errors must be dismissed for want of jurisdiction.

Kreiger *v.* Shelby R. R. Co., 125 U. S., 39.

It is not pretended that the Supreme Court of the State, in its decision of this case, upheld or gave effect to any law of the State subsequent to the alleged contracts, claimed by the plaintiffs in error to impair the obligation of the contracts.

The ground of the judgment below appears in the opinion of the Supreme Court of Mississippi, to which, under the existing acts of Congress, this Court is at liberty to refer (Kreiger *v.* Shelby R. R. Co., 125 U. S., 44; Dale Tile Manufacturing Co. *v.* Hyatt, *ib.*, 53, 54).

The decision, as the opinion shows, was based entirely upon the alleged bonds, and the act of March 17, 1871, under which they purported to be issued, and pronounced the bonds invalid as not within the authority vested by that act in the Board of Levee Commissioners.

Agreeably to the established doctrine of this Court that decision is not a law of the State impairing the obligation of any contract, within the meaning of the prohibition in the Constitution of the United States.

The appropriate function of the tribunals is *jus dicere*, to declare the rule, and not to make it; and the law will be *presumed* to have been as the Court held, although the contrary even should be apparent.

The question as to the validity and binding obligation of these "bonds," as transcending or not the special

statutory authority vested by the State in the Board of Levee Commissioners, is a question which it is the peculiar function of the State tribunals to adjudicate, and their judgment is the law by which the parties must abide, agreeably to the established doctrine of this Court. Lehigh Water Co. *v.* Easton, 121 U. S., 392; Chicago Life Ins. Co. *v.* Needles, 113 U. S., 574; N. O. Waterworks *v.* La. Sugar Co., 125 U. S., 32, 39.

Second.

The second contention, on the part of the plaintiffs in error, is, that by the decision of the Court below the power of the State of Mississippi to make other than gold and silver coin a legal tender was, in effect, declared.

This contention, like the first proposition, in the argument of the learned counsel, apparently asserts the jurisdiction of this Court to review the present judgment, upon the second clause of the second section of the amendatory judiciary act of 1867, as embodied in section 709 of the Revised Statutes, which provides for a review by this Court of the final judgment or decree of the highest Court of a State, "*where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity.*"

It is quite indisputable that the Court below, in this case, made no decision in favor of the validity of the Mississippi act of 1871, under which the Board of Levee Commissioners purported to issue certain "bonds," as not repugnant to the provision of the 10th section of article I of the Constitution of the United States, which declares that "no State shall make anything but gold

and silver coin a tender in payment of debts," and that the decision of such a constitutional question was not essential to or involved in the decree dismissing the bill.

The Court below decided that the "bonds" were "*void from the beginning.*" (Record, p. 75.)

It was adjudged in effect that there were no contracts, no bonds, no debts, in the case, because the Board of Levee Commissioners, in making and issuing the paper-writings in suit, transcended the special authority vested in it by the statute, and the Court did not decide any question of repugnancy between the Mississippi act and the prohibition in the Constitution upon the States to make anything but gold and silver coin a tender in payment of debts.

The result in this case would have necessarily been the same if the Constitution had not contained the prohibition against State tender laws.

This is so plain upon the face of the record that argument would only serve to obscure the proposition.

Third.

The third and last proposition, on the part of the plaintiffs in error, is, that their rights under the Constitution and laws of the United States, as to what constitutes "money" or "dollars," were violated by the decision of the Court below.

The Revised Statutes, section 709, give this Court jurisdiction to review the final judgment or decree of the highest court of a State in which a decision would be had "*where any title, right, privilege, or immunity is claimed under the Constitution or any Treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity, specially set up or claimed*

by either party under such Constitution, treaty, statute, commission, or authority."

If the jurisdiction of the Court is asserted, as it seems to be, by the plaintiffs in error, upon this clause of the statute, it is clearly not maintainable.

It is manifest that there was no decision against them, by the Court below, in respect of any title, right, privilege, or immunity specially, or otherwise, set up or claimed by them, in that Court, under the Constitution or any statute of, or authority exercised under, the United States.

The decree, as shown in the able Briefs of Mr. Johnston and Mr. Harris, for the defendants in error, proceeded wholly upon the general law of the State, and upon the legal construction and effect of the Act of 1871, and of the "bonds" issued by the Levee Board, and not upon any provision of the Constitution or laws of the United States.

This Court has often said that the judgments of the State Courts upon the construction and effect of State statutes, are not subject to re-examination here, and, in fact, control this Court.

In *Citizens' Bank* v. *Board of Liquidation*, 98 U. S., 141, the State Court refused to compel State officers to issue funding bonds, under a State refunding act, for certain State obligations; and this Court said:

"This was refused, because, in the opinion of the Court, the (refunding) act did not provide for *that class of State obligations.*

"*Over this decision we have no control. In fact, being the construction of a State statute by a State Court, it controls us.*"

In *Lehigh Water Co.* v. *Easton*, 121 U. S., 391, it was said:

"Whether the former (act) repealed, by implication, the Acts of 1867, presents no question arising under the National Constitution. That is a question simply of statutory construction which the State Court was competent to determine, and whose judgment in respect thereto is not subject to re-examination in this Court."

In *N. O. Water Works* v. *La. Sugar Co.*, 125 U. S., 32, the Court said that if the license by the City Council to the defendant company "was within the authority vested in the City Council by the law of Louisiana it was valid; if it transcended that authority it was illegal and void. *But the question whether it was lawful or unlawful depended wholly on the law of the State, and not at all upon any provision of the Constitution or laws of the United States.*"

In *Beatty* v. *Benton*, 135 U. S., 244, 254, the Court, speaking by Mr. Justice Blatchford, said, in dismissing the writ of error, that the construction of the trust deed, and the question of its validity, under the statutes of Georgia, upon which the decision below was based, were "matters for the exclusive decision of the Supreme Court of that State."

In *De Saussure* v. *Gaillard*, 127 U. S., 232, the Court held that the meaning of the provisions of the statute of South Carolina, under which the action was brought, was not a question it was authorized to examine, and it said:

"*We are not authorized to inquire into the grounds and reasons upon which the Supreme Court proceeded in its construction of that statute.* It is a State statute conferring certain rights upon suitors choosing to avail themselves of its provisions upon certain conditions in certain cases. Who may sue under it, and when, and under what circumstances, are questions for the exclusive determination of the State tribunals, whose judgment thereon is not subject to review by this Court."

It seems very clear, upon these authorities, that the question of the construction of the Act of the Legislature of Mississippi, under which these "bonds" purported to be issued, is not one which this Court will examine upon this writ of error.

The construction and effect of the Act depended, of course, wholly upon the *intention* of the Legislature, which was not and could not be a Federal question.

The opinion of the Court below shows that its judgment was founded upon its view of the legislative intention in enacting the law.

The Court say :

"In authorizing the issuance of bonds for one million of dollars, and in the use of the term "money," *the Legislature must be supposed to have meant*, in the Act cited, that money which constituted the basis of the general business of the country, and was a legal tender for the payment of debts." (Rec., p. 75.)

What the Legislature *meant* by the words employed in the law, was a matter which the State Court was obliged to decide, and the conclusive presumption is that the Legislature intended what the Court below said it intended.

In *Leffingwell* v. *Warren*, 2 Black., 255, this Court held that the construction given to a State statute, by the highest judicial tribunal of the State, is to be regarded "as part of the statute, and as binding upon the Courts of the United States as the *text*."

It is not supposed, under the authorities above cited, that this Court will inquire into the grounds and reasons upon which the Supreme Court of the State proceeded in the construction of the statute.

The reference of the Court, in its opinion, to the *fact*, known of all men and by all courts, that, when this

act was passed, and these bonds were issued, gold coin of the United States was at a *premium*, neither involved nor implied the decision of any Federal question.

The fact was referred to as evidence of the intention of the Legislature not to authorize gold bonds to be issued by the Commissioners.

It is well settled that Courts, in construing a statute, may recur to the history of the times, when it was passed, in order to ascertain the meaning of its provisions (United States *v.* Union Pacific R. R. Co., 91 U. S., 79).

If the Court was mistaken as to the fact, or in its conclusion from the fact, it would not matter, in the least, for any purpose of the present writ of error.

The ultimate conclusion that the "bonds" were "void *for want of authority for their issuance*," was the decision of a question of State jurisprudence by the highest judicial tribunal of the State, and does not present a case under the Constitution or laws of the United States.

The contention of the plaintiffs in error that the bonds are not payable in gold coin, contrary to the decision of the Court below, clearly presents no Federal question for the examination of this Court.

In fine, the judgment of the Court below does not deny or injure any right claimed by the plaintiffs in error, under the Constitution or laws of the United States, and the case involves no question arising under that Constition or those laws.

It is respectfully submitted that there is no occasion to retain this case on the docket, and that it should be dismissed for want of jurisdiction.

J. HUBLEY ASHTON,
Of Counsel, with Mr. Harris,
for the Louisville, New Orleans,
and Texas Railway Company.

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UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF UNITED STATES.

AMOS WOODRUFF, TRUSTEE, ET AL.,

No. [illegible].] vs.

THE STATE OF MISSISSIPPI, ET AL.

BRIEF FOR THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, ONE OF THE DEFENDANTS IN ERROR IN THE ABOVE SUIT.

WM. G. YERGER, of Counsel for
Louisville, New Orleans & Texas Railway Co.,
Defendant in Error.

act was passed, and these bonds were issued, gold coin of the United States was at a *premium*, neither involved nor implied the decision of any Federal question.

The fact was referred to as evidence of the intention of the Legislature not to authorize gold bonds to be issued by the Commissioners.

It is well settled that Courts, in construing a statute, may recur to the history of the times, when it was passed, in order to ascertain the meaning of its provisions (United States *v.* Union Pacific R. R. Co., 91 U. S., 79).

If the Court was mistaken as to the fact, or in its conclusion from the fact, it would not matter, in the least, for any purpose of the present writ of error.

The ultimate conclusion that the "bonds" were "void *for want of authority for their issuance*," was the decision of a question of State jurisprudence by the highest judicial tribunal of the State, and does not present a case under the Constitution or laws of the United States.

The contention of the plaintiffs in error that the bonds are not payable in gold coin, contrary to the decision of the Court below, clearly presents no Federal question for the examination of this Court.

In fine, the judgment of the Court below does not deny or injure any right claimed by the plaintiffs in error, under the Constitution or laws of the United States, and the case involves no question arising under that Constition or those laws.

It is respectfully submitted that there is no occasion to retain this case on the docket, and that it should be dismissed for want of jurisdiction.

J. HUBLEY ASHTON,
Of Counsel, with Mr. Harris,
for the Louisville, New Orleans,
and Texas Railway Company.

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APR 23 1894
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CLERK.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF UNITED STATES.

AMOS WOODRUFF, TRUSTEE, ET AL.,

No. 617.] vs.

THE STATE OF MISSISSIPPI, ET AL.

BRIEF FOR THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, ONE OF THE DEFENDANTS IN ERROR IN THE ABOVE SUIT.

WM. G. YERGER, of Counsel for
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UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF UNITED STATES.

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No. 617.] vs.

THE STATE OF MISSISSIPPI, ET AL.

BRIEF FOR THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, ONE OF THE DEFENDANTS IN ERROR IN THE ABOVE SUIT.

A brief history of the Levee legislation in the State of Mississippi, and as applicable to the questions involved in the above suit, and a statement of how the Louisville, New Orleans & Texas Railway Company, one of the defendants in error therein, obtained title to the land claimed by it, is necessary to a proper understanding of the questions at issue, and for determination in said suit.

On the 2nd day of December, 1858, the Legislature of the State of Mississippi passed an Act, en-

titled "An Act to aid in repairing and perfecting the levee of the Mississippi River, in the counties of DeSoto, Tunica, Coahoma, Bolivar, Washington and Issaquena. By Section 14 of said Act, the Board of Levee Commissioners created thereby, were authorized to issue its script, payable at such periods as they might stipulate, but not beyond the first day of January, 1863, and in such sums as they saw proper, not to exceed in the aggregate, a half million of dollars. A large amount of the script of said Board was issued in accordance with said authority. The day of its maturity, although unforeseen at the time of its issuance, came when the United States was engaged in a civil war, and was therefore, not paid. When said war closed, said script was still outstanding, together with a large amount of interest due thereon, and it was necessary for the owners of property in the Levee District who were responsible for the payment of said script, to devise some means for its payment; to which end, on the 13th day of February, 1867, the Legislature of the State of Mississippi passed an Act, entitled 'An Act to provide for the payment of all debts and liabilities contracted or assumed, and all script or evidence of debt, issued by the General Board of Levee Commissioners, organized by an Act approved December 2nd, 1858, and also for the payment of all debts and liabilities incurred or assumed by any county for work and labor done or material furnished prior to the first day of January, 1862, in any county included in the Levee District by the Act of December 2nd, 1858, aforesaid, whether such debts or liabilities were incurred or assumed before or after the passage of the act aforesaid;" see Acts of 1866-7, page 237 et seq.

By said act, there was levied and assessed a uniform tax of five cents an acre per annum, on each

and every acre of land in the counties of Tunica, Coahoma, Bolivar, Washington and Issaquena, and in such parts of DeSoto county as were included in the Levee District formed by the Act approved December 2nd, 1858, and a tax of three cents per acre was levied and assessed per annum, by said Act, on each and every acre of land lying in any other county included in said Levee District, and which was subject to taxation by virtue of the provisions of the Act of December 2nd, 1858, which said tax was payable annually, on or before the first day of May in each and every year from the first day of May, 1868. Said tax, as levied and assessed by said Act of February 13th, 1867, was levied, assessed and collected for the purpose of paying off the indebtedness incurred as hereinbefore set forth, by the Levee Board, created by the Act of December 2nd, 1858, under the provisions of said Act of February 13th, 1867. In order to entitle a party to payment, he was required to agree to remit all interest that may have accrued and due and payable on such claim or demand, up to the first day of June, 1867, and to surrender such claim or demand to the Board mentioned in said Act, to be cancelled and destroyed, and to accept in lieu thereof, bonds to be issued by such Board, payable in one, two, three, four and five years, with interest thereon, at the rate of five per centum per annum, from the first day of June, 1867.

Provision was made by Section two of said Act of February 13th, 1867, for the sale of all land upon which the tax levied and assessed, was not paid, in accordance with the provisions of said Act. At different times, all of the lands mentioned in the bill of complaint in this suit were sold, because of the nonpayment of the taxes due thereon as aforesaid, by said Act of February 13th, 1867, and were, in de-

fault of bidders, and as provided for by Section 13 of said Act, struck off to the Board of Levee Commissioners, created by said Act.

By express provision of said Act of February 13th, 1867, and Section 13 thereof, all lands acquired by the Board of Levee Commissioners, created by virtue of said Act, were exempt from State taxation for levee purposes, or otherwise, until the same were sold or disposed of by said Board.

On the 17th day of March, 1871, the Legislature of the State of Mississippi, passed an Act, entitled "An Act to redeem and protect from overflow from the River Mississippi, certain bottom lands herein described." See Acts of the Legislature of Mississippi of 1871, page 1; and by said Act, declared that the Board of Commissioners, to be styled "The Levee Board of the State of Mississippi, District No. 1," should be a body politic and corporate, by the name and style aforesaid. By said Act, the powers and duties of said Board were defined, chief among which was the repairing and maintaining of a levee on or near the east bank of the Mississippi River, extending from the base of hills on or next to said river in the State of Tennessee, or to the base of hills at any convenient point in the county of DeSoto, Mississippi, or in the State of Tennessee, to the southern boundary of the county of Coahoma, Mississippi, and of levying taxes and borrowing money. By Section 9 of said Act, the commissioners hereinbefore named, and to enable them to carry out the purposes of said Act, were given power to borrow money, and to that end, were authorized to issue the bonds of said Board to the amount of one million dollars. Purporting to act in accordance with the provisions of said Section 9, the Board of Levee Commissioners created by said Act, issued a million dollars of bonds, and which

plaintiffs in error allege in their said bill, that they have become in part the owners of.

By Section 8 of said Act, a tax was levied and assessed for the purpose of building, repairing, constructing and maintaining levees, and for carrying into effect the object and purpose of said Act, provision was made that the tax so levied and assessed by said Act should continue for 12 years from the date thereof.

By Section 10 of said Act, it was expressly provided that should any of the charges and assessments imposed by said Act not be collected as in said Act provided, that then the holder of any bond or obligation of the Board created thereby, might apply to the judge of the Circuit or Chancery Court of any District included in the Levee District, for a mandamus, directed to said Board, and by which mandamus said Board should be ordered and compelled to have collected and paid off said charges and assessments as in said Act directed, or that one or more special commissioners, with authority to collect and pay over said charges and assessments, should be appointed, and for the collection of said charges and assessments, and that said commissioners should have all the power given by said Act for the collection of said charges and assessments.

By Section 12 of said Act, it was provided that should the owners of any land on which the tax as levied and assessed by said Act fail to pay said tax by the time provided therein, that said land should be sold as in said Act provided, and be subject to redemption as therein provided, within two years (erroneously printed in said Act ten) from the day of said sale.

On the 11th day of April, 1876, Acts of 1876, page 166 et seq., the Legislature of Mississippi passed an

Act to abolish the office of Liquidating Levee Commissioners, and to provide for the redemption of land in the Liquidating Levee District, and for other purposes, and by which the office of Liquidating Levee Commissioners as then existing was abolished, and constituting the Auditor of Public Accounts and the Treasurer of the State, Liquidating Levee Commissioners, ex-officio, and prescribing the duties of said Auditor and Treasurer, as ex-officio Liquidating Levee Commissioners. Section 6 of said Act provided how all lands lying within the Levee Districts therein named, or held by the Levee Boards of either Levee District No. 1 or 2, were to be redeemed, and Section 13 of said Act, provided that if any of the lands mentioned in said Act should not be redeemed or purchased as therein provided, on or before the first day of January, 1878, that no further time for redemption should be allowed, and that the title to said land should thereafter be vested in the State, and that no action in law or equity should be maintained in any Court of the State, either against the State or any grantee or donee from the State, for the recovery of any such lands, and that all levee taxes then due, or that might become due on said land, should be suspended until the same was sold or donated by the State, when the same should be paid by the grantee or donee.

On the 11th day of April, 1876, (Acts of 1876, page 174 et seq.) the Legislature passed an Act, entitled "An Act to abolish the Levee Board of District No. 1, and to pay the debts of said Board," by which the offices of Commissioners, Secretary, Treasurer and Collector of Levee District No 1, as then existing and organized, under Act of March 17th, 1871, were abolished, and the Auditor of

Public Accounts and the Treasurer of the State were constituted and appointed the Levee Board of District No. 1, ex-officio, and providing that said Auditor and Treasurer, as said ex-officio Levee Board, should discharge all the duties before that time exercised and enjoyed by said Levee Board of District No. 1, and on the 5th day of March, 1884, Acts of 1884, page 184, the Legislature passed an Act, entitled "An Act to repeal an Act to redeem and protect from overflow from the river Mississippi, certain bottom lands herein described, approved March 17th, 1871, and for other purposes," by which the Act of March 17th, 1871, as in said Act mentioned, was repealed; and on the 2nd day of March, 1888, Acts of 1888, page 40 et seq., the Legislature passed an Act, entitled "An Act to quiet and settle the title to certain lands in the Yazoo Delta, which were sold by the Commissioners for the Chancery Court for the first District of Hinds county, in the case of Joshua Green and others against Hemingway & Gibbs, Treasurer and Auditor, and ex-officio Liquidating Levee Commissioners, and by which said last named Act, the Auditor of Public Accounts was required, upon application made to him by any purchaser of Levee lands mentioned in said Act, from the Commissioners of the Chancery Court of Hinds county, Mississippi, and upon the payment to him in lawful money of all taxes that had accrued on said land, to execute and deliver to said purchaser a deed, conveying the State's title to same.

By Section 7 of said Act, the Louisville, New Orleans & Texas Railway Company, defendant in error, was authorized to receive the deed of said Auditor, conveying the State's title to the land held by it, acquired by the Memphis & Vicksburg

R. R. Co., by purchase under the decree in the suit of Joshua Green and others, against Gibbs and Hemingway, Treasurer and Auditor, and ex-officio Liquidating Levee Commissioners, upon the payment in lawful money, of the United States, the taxes thereon for the years 1882, 1883, 1886 and 1887, and thereafter, and upon the express condition that said company and its vendees should be entitled to the benefit of the provision of said section only, when it should by resolution of its Board of Directors, surrender its claim to the exemption of the land aforesaid from taxation, and file said resolution, or a duly certified copy thereof, with the Secretary of State, and should enter a dismissal of the suit then pending in the Circuit Court of the United States for the Southern District of Mississippi wherein said Railroad Company was complainant, and G. Y. Scott, Sheriff, and other Sheriffs and Collectors of the counties in which said lands were situated, were defendants, in which suit said claim to exemption of the land aforesaid was controverted, and that said defendant in error should accept the provisions of said Act within 90 days after its passage.

The Louisville, New Orleans & Texas Railway Company, defendant in error, complied with the terms imposed on it by said Section 7, and received from the Auditor, a deed conveying to it, the title of the State of Mississippi to all the lands acquired by it from the Memphis & Vicksburg R. R. Co., and which were acquired by said last named company by purchase under the decree in the case of Green et al., vs. Hemingway et al., and which deed included all the land mentioned and set out in the bill of complaint of plaintiffs in error herein, belonging to the defendant in error, the Louisville, New Orleans & Texas Railway Company.

On the 20th of February, 1887, Joshua Green, for himself and the other creditors of the Liquidating Levee Board, created by the Act of February 13th, 1867, holding a large number and amount of the bonds issued by said Board by virtue of the provisions of said Act, filed a bill in the Chancery Court of Hinds county against S. Gwin, Auditor, and W. L. Hemingway, Treasurer, of the State of Mississippi, and ex-officio Liquidating Levee Commissioners, and the State of Mississippi, for the purpose of having the land sold, which had, prior to that time, been sold because of the non-payment of the tax levied and assessed thereon by said Act of February 13th, 1867, and which at that time was held by said Auditor and Treasurer, and the State, as a security and trust for the payment of the bonds so issued as aforesaid, and held by them, and for the appropriation of the proceeds thereof to the payment of said bonds. To said bill, S. Gwin, the then Auditor, and W. L. Hemingway, the then Treasurer, and as such, ex-officio Liquidating Levee Commissioners, and the State of Mississippi, were made parties, and each and all of them entered their appearance therein, and demurred to the bill of complaint filed against them; their said demurrer having been over-ruled after other proper steps taken, a decree was rendered in said suit by the Chancery Court of Hinds county and the land involved in this suit was sold thereunder, and that now owned by the defendant in error, the Louisville, New Orleans & Texas Railway Company, was purchased by the Memphis & Vicksburg Railroad Company, the purchase price therefor paid, and the same subsequently sold and transferred to the Louisville, New Orleans & Texas Railway Company, by the Memphis & Vicksburg Railroad Company.

On the 17th day of August, 1888, plaintiffs in error claiming to be holders of bonds issued by the Levee Board of District No. 1, exhibited their bill in the Chancery Court of Hinds county, Mississippi, against the State of Mississippi, the Auditor and Treasurer thereof; the Delta & Pine Land Company, N. T. Burroughs and the Louisville, New Orleans & Texas Railway Company, seeking to enforce as a lien on the land purchased by said last named parties under the decree in the case of Green vs. Gibbs et al., the amount of said bonds, together with the interest thereon, and amounting in the aggregate to about Six Hundred Thousand (600,000) Dollars. Defendants in error appeared and filed separate demurrers to said bill, and on the hearing of said demurrers, the Chancellor of the Chancery Court of Hinds county, Mississippi, sustained the same, and dismissed said bill, from which decree plaintiffs in error appealed to the Supreme Court of the State of Mississippi, and which said last named Court on the 11th day of January, 1889, affirmed the decision of the lower Court, and from which said decision of said Supreme Court, plaintiffs in error obtained a writ of error to this Court on the ground that a Federal question was involved in said decision.

BRIEF AND ARGUMENT.

The suit of the plaintiffs in error is founded on a series of bonds issued by the Levee Board of District No. 1, in the State of Mississippi. The decision of the Chancery Court of Hinds county, Mississippi, in said suit, where the same was instituted, is in the following words, namely:

"These bonds upon their face, show that they were to be paid in gold coin of the United States. It is well settled, that corporations cannot do anything except by express authority, or by implication, only, when necessary to carry out the powers expressly conferred. There was no express authority in this case to the Levee Board, of District No. 1, to issue bonds payable in gold coin, and it no where appears that it was necessary to issue gold bonds in order to carry out the objects of the power to borrow money, or to do ought else to be done by the law. The question is not, to what extent have the Levee Commissioners exceeded their authority, but HAVE they exceeded it? I think they have, without expressing any opinion on the other grounds of the demurrers. I think for the above reasons, they should be sustained, and a decree will be made accordingly." Record pages 69 and 70. And that of the Supreme Court of said State affirming the decision of said Chancery Court as follows:

"In authorizing the issuance of bonds for One Million Dollars, and in the use of the term "money," the Legislature must be supposed to have meant in the Act cited, that money which constituted the basis of the general business of the country, and was the legal tender for the payment of debts. Therefore, there was no authority in the act for the issuance of bonds, payable in gold coin, and they were void for want of authority in their issuance. This is a matter of substance, involving a departure in a most material feature from the Act authorizing bonds to be issued, and rendered them void from the beginning. This is decisive of this case, and renders unnecessary, if not improper, the consideration of any other question." Record page 75.

It is that decision of said Supreme Court, of

which plaintiffs in error complain, and seek to have reviewed and reversed by this Court, and for the reason as they say, that it is in violation of Section 10, Article 1, of the Constitution of the United States.

ARE THE BONDS VOID?

The bonds issued by the Levee Board of District No. 1, of the State of Mississippi, and sued on in this suit, if authorized at all, were authorized by Section 9 of the Act of March 17th, 1871. Acts of Mississippi of 1871, page 1. Said section provides that for the purposes mentioned in the aforesaid act, and to enable them to carry out the same, said Levee Board of District No. I, might borrow money, and to that end, might issue the bonds of said Board, to the amount of One Million Dollars, in such sums and denominations, not less than One Hundred Dollars each, as said Board might prescribe. Said Board issued a Million Dollars of bonds, and in doing so, acknowledged itself indebted in the amount of each of said bonds, in gold coin.

The acknowledgement and undertaking of said Board in making said bonds payable in gold coin, was outside of, and in excess of the authority conferred on it by the Act of the Legislature of the State of Mississippi, approved March 17th, 1871. Acts of 1871, page 1. Under the Act aforesaid, creating said Levee Board of District No. 1, no power to issue bonds payable in gold coin was expressly granted, nor can such power be found, either by implication, or the necessity to carry out the objects intended to be accomplished by said Act. The action of said Levee Board, in issuing said bonds payable in gold coin exclusively, exceeded their authority, and was against the inter-

ests of the people, and as a consequence, said bonds are void.

Statutes are always liberally construed, and in favor of the State or people, who are a part thereof. When the manner in which a power to be exercised is prescribed in the charter, that mode must be pursued, otherwise, a burden greater than that authorized by law, will be imposed upon the persons who are to discharge it.

The same inquiry is made in this case that was made by this Court in the case of Police Jury v. Britton, 15 Wallace U. S. Supt. Ct. Reports, page 572, namely: Where, among all the powers, given to the Levee Board of District No. 1, by the Act aforesaid, can the power be found, or fairly inferred, authorizing it to issue bonds payable in gold coin? When the Legislature deemed it desirable for said Board to issue bonds, to enable it to raise money, the power was given to issue a Million Dollars of bonds —not a Million Dollars of bonds payable exclusively in gold coin. Where was the necessity for making said bonds so payable? The express authority was not given, and so to do was not necessary to the carrying out of the purposes of the Act by which said Levee Board was created, and under which said bonds were issued. It is not a question of what the Legislature might have authorized said Levee Board to do as to issuing bonds, but what it did authorize. Had said Board made the bonds issued by it, payable in "Dollars," only as the Act creating them expressly authorized and contemplated, said bonds would have been payable either in gold, silver or any of the legal tender currency of the United States. It was common knowledge, and of such the Courts of the country will take cognizance, that at the time of the issuance of said bonds, that gold was at a pre-

mium of about eleven per centum; and if this be true, said Levee Board, by making said bonds payable in gold coin, increased the indebtedness of the tax payers of Levee District No. 1, over One Hundred Thousand Dollars in excess of, and beyond what the Legislature intended should be placed as a burden upon them.

What was meant by the Legislature, when it used the word "Dollars" in Section 9 of the Act of March 17th, 1871, and under which the bonds sued on herein were issued? Webster defines a dollar to mean, "a silver coin of Spain and of the United States, of the value of 100 cents, or of about four shillings and four pence sterling." What did the Legislature of Mississippi mean, when it authorized the Levee Commissioners of District No. 1, to issue a Million Dollars of bonds? What ordinarily would be understood as the kind of dollars referred to in the act authorizing the issuance of said bonds? Ordinarily, the kind of dollars referred to in said Act, would be understood to be either gold, silver or such currency as had, prior to that time, been made a legal tender by the Government of the United States. There is no inquiry necessary, in order to ascertain the kind of dollars that the Levee Commissioners intended should be paid in satisfaction of the bonds issued by them. The recitation in said bonds furnishes an indisputable answer to that inquiry, and the acknowledgment and undertaking of said Commissioners shows that said bonds were to be paid in Gold coin.

As said by this Court in Nix v. Hedden, 149 U. S., page 304: "The Court takes judicial notice of the ordinary meaning of all words in our tongue"

The following is an exact copy of one of the bonds sued on by plaintiffs in error in this suit, and the coupon attached thereto. It is dated January 1st, 1872, and is as follows, namely:

"One of a series of five hundred bonds of One Thousand Dollars each, numbered from 1 to 500 consecutively, issued by the Levee Board of the State of Mississippi, District No. 1, in pursuance of, and under the authority granted in an Act of the Legislature of the State of Mississippi, approved March 17th, 1871, entitled An Act to redeem and protect from overflow from the River Mississippi, certain bottom lands herein described.

Know all men by these presents, that the Levee Board of the State of Mississippi, District No. 1, under and by authority of the law mentioned in the caption hereof, hereby acknowledge themselves, for value received, indebted to the bearer in the sum of One Thousand Dollars in gold coin of the United States of America, which said sum, the said Levee Board of the State of Mississippi, District No. 1, for themselves and their successors, do hereby bind themselves, and engage well and truly to pay to the bearer, on the first day of January, A. D. 1878, at the Banking House of the National Park Bank in the City of New York, and the said The Levee Board of the State of Mississippi, District No. 1, for themselves and their successors, do hereby engage to pay an interest thereon of eight per centum per annum, payable semi-annually, on the first days of January and July of each and every year ensuing the date hereof, until the maturity and payment of this bond, at the place of payment mentioned in the coupons hereto annexed, upon the delivery of the coupons as they severally become due." Record, page 14.

The coupon attached to said bond is as follows:

"The Levee Board of the State of Mississippi, District No. 1, will pay to the bearer on the first day of January, 1879, at the National Park Bank of New York, Twenty ($20) Dollars in currency of the United

States, being the semi-annual interest on Bond No. 51." Record, pages 14 and 15.

The list of the bonds and coupons held by each of the complainants, and marked Exhibits "A," "B," and "C" is filed in the above cause. Record, page 15, folio 13.

All of the bonds issued by the Levee Commissioners of District No. 1, and coupons attached thereto, were in the form of that given above. An examination of the form of bonds issued by said Levee Commissioners of District No. 1, will disclose the fact that they do not conform to the terms of the Act of the Legislature of Mississippi authorizing their issuance.

All parties receiving and purchasing said bonds, were charged with knowledge of the infirmity in them. Amos Woodruff vs. Okolona, 57 Mississippi, page 806 et seq.

In Anthony against County of Jasper, 101 U. S., page 697, this Court said: "Dealers in municipal bonds are charged with notice of the laws of the State granting power to make the bonds they find on the market This we have always held. If the power exists in a municipality, the bona fide holder is protected against mere irregularities in the manner of its execution, but if there is a want of power, no legal liability can be created." McGarrahan vs. Mining Co., 96 U. S., page 316.

I am aware that Justice Bradley of this Court said, in opinion delivered by him in the legal tender cases, 12 Wallace, page 566, said "that it makes no difference in the principle of the thing, that the contract of the debtor is a specific engagement in terms, to pay gold or silver money, or to pay specie. So long as the money of the country, in whatever terms described, is in contemplation of the parties, it is the

object of the legal tender laws, to make the credit of the Government a lawful substitute therefor." But such is not the law as laid down by this Court. Bronson vs. Rhodes, 7 Wallace 229; Trebilock vs. Wilson, 12 Wallace 687.

Was it the contemplation of the parties, that the bonds issued by the Levee Commissioners of District No. 1, were to be paid in the money of the country? That is, any money made a legal tender for debts by the National Government of the United States? Confessedly not, for on the face of said bonds, it was expressly stated that the amount thereof was payable in gold coin. In the case of Trebilock vs. Wilson, supra, the promissory note sued on, was payable by its terms, in specie. The maker of said note tendered to the owner thereof, and in payment of the same, notes of the United States, declared by the Act of Congress of February 25th, 1862, to be a legal tender in payment of debts. The Supreme Court of Iowa held the tender sufficient, and rendered judgment against the owner of said note, and which said judgment was by this Court reversed, the Court saying:

"The terms, 'in specie,' are merely descriptive of the kind of dollars in which the note is payable, there being different kinds in circulation, recognized by law. They mean that the designated number of dollars in the note shall be paid in so many gold or silver dollars of the coinage of the United States. They have acquired this meaning by general usage among traders, merchants and bankers, and are the opposite of the terms 'in currency,' which are used where it is desirable to make the note payable in paper money. These latter terms 'in currency' mean that the designated number of dollars is payable in an equal number of notes, which are current in the

community as dollars. This being the meaning of the terms 'in specie,' the case is brought directly within the decision of Bronson vs. Rhodes, supra, where it was held that express contracts, payable in gold or silver dollars, could only be satisfied by the payment of coined dollars, and could not be discharged by notes of the United States, declared to be legal tender in payment of debts."

In Bronson vs. Rhodes, supra, the Court said: "A contract to pay a certain number of dollars in gold or silver coin, is therefore, in legal import, nothing else than agreement to deliver a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion to that weight. It is not distinguishable, as we think in principle, from a contract to deliver an equal weight of bullion, of equal fineness. It is distingnishable in circumstance only, by the fact that the sufficiency of the amount to be tendered in payment, must be ascertained—in the case of bullion, by assay and the scales, while in the case of coin, it may be ascertained by count." And in the opinion of the Court in said case, in conclusion, the Court said:

"That express contracts to pay coined dollars, can only be satisfied by the payment of coined dollars. They are not debts which may be satisfied by the tender of U. S. notes"

As hereinbefore stated, the conclusion reached, and the view expressed in the case of Bronson vs. Rhodes, was adhered to, and reiterated by this Court in the case of Tribilock vs. Wilson, supra, and after the decision rendered by this Court in the Legal Tender cases, and reported in 12 Wallace, supra. The Legislature of Mississippi authorized the issuance of bonds payable in dollars, meaning thereby, I insist, the ordinary dollars and current money of the coun-

try, and not gold dollars, and provided for the payment of said bonds and the interest thereon, by imposing a servitude in the shape of a specific tax for 12 years on the property situated in Levee District No. 1, of that State.

In authorizing the issuance of the bonds hereinbefore referred to, and in imposing the tax for the payment of the same, and interest thereon, the Legislature of Mississippi no where said, either directly or by implication, that the bonds were to be paid, or the tax to be levied and collected for the payment thereof, should be paid or collected in gold coin. How then, could the contemplation of the Legislature authorizing, and that of the Commissioners issuing said bonds, have been the same, when the authority granted by the Legislature was to issue bonds payable in dollars, generally, and the promise and undertaking of the Levee Commissioners, as written in unequivocal language in the bonds issued by them, was to pay in gold dollars.

The Act of 1871, of Mississippi, and under which said bonds were issued, required that the bonds to be issued under its authority, should be made payable in a particular manner. The mode directed by said Act was not pursued by the Levee Commissioners in issuing said bonds. The variance between the power granted to issue said bonds, and that exercised by the Commissioners in issuing them was material, and sufficient to render said bonds void, and if said bonds are void they constitute no charge whatever on the land mentioned in the bill and on which it is sought by plaintiffs in error to impress a lien for the payment thereof. And plaintiffs in error would not be entitled to any relief. The Court will notice that the interest coupons attached to the bonds under discussion are payable in currency.

WAS THERE A FEDERAL QUESTION INVOLVED IN THE DECISION OF THE SUPREME COURT OF MISSISSIPPI AS RENDERED IN THE CASE NOW UNDER CONSIDERATION?

The errors assigned by the plaintiffs in error in this suit are as follows:

1st. That the Supreme Court of Mississippi erred in deciding that the bonds or contracts executed under the Act of March 17th, 1871, were void and of no obligation, because made payable in "dollars" in gold coin of the United States of "America," thereby by such decision impairing the obligation of said contracts.

2nd. That under the Constitution and laws of the United States "gold coin" is, and was in 1871, "money" and the "dollar" and said decision annulls the said Constitution and laws, by holding that the contract executed under authority of the State statute to borrow "money" and issue bonds payable in "dollars" was illegal, because payable in "dollars in gold coin of the United States of America."

3rd. That by its decision, the Court below, by such construction of the Act of March 17th, 1871, and the said bonds, committed error in holding in effect, that the State of Mississippi had power to pass a law under which "anything but gold or silver coin" could be "a tender in payment of debts" contrary to Section 10, Article 1 of the Constitution of the United States.

4th. That the Court below erred in affirming the decree of the Chancery Court of Hinds County, wherein, and by which Court, the above assigned errors were likewise committed.

The errors assigned, show that the decision of the Supreme Court of Mississippi complained of by plain-

tiffs in error, was one construing the force and effect of an authority contained in a statute of that State, passed March 17th, 1871, Acts of 1871, page 1, and by virtue of which the bonds in question were issued. The case of Missouri ex Rel. the Quincy Mo. & Pac. R. R. Co. vs. Harris, 144 U. S., p. 210, is directly in point, and holds that "no Federal question is involved when a Supreme Court of a State decides that a municipal corporation, within the State, had not power under the Constitution and laws of the State, to make the contract sued on."

The Supreme Court of Mississippi in this case, decided that the Levee Commissioners of District No. 1, a CORPORATION, of that State, had no legislative authority to issue the bonds sued on in the form which it did, and therefore had no right to make the contract sued on by plaintiffs in error in this suit.

In New Orleans Water Works vs. Louisiana Sugar Refining Co., 125 U. S. 18, 30, the Court says: "In order to come within the provisions of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of the contract have been impaired, but it must have been impaired by a law of the State. The prohibition is aimed at the legislative power of the State, AND NOT AT THE DECISIONS OF ITS COURTS or the acts of administrative or executive boards or officers, or the doings of corporations or individuals.

This Court therefore, has no jurisdiction to review the judgment of the highest Court of a State, on the ground that the obligation of a contract has been impaired, unless some LEGISLATIVE ACT of the State has been upheld by the judgment sought to be reviewed. The general rule as applied to

this class of cases has been clearly stated in two opinions of this Court delivered by Mr. Justice Miller." "It must be the constitution or some law of the State which impairs the obligation of the contract, or which is otherwise in conflict with the Constitution of the United States, and the decision of the State Court must sustain the law or Constitution of the State in the matter in which the conflict is supposed to exist, or a case for this Court does not arise. R. R. Co., vs. Rock, 4 Wallace, 177.

We are not authorized by the Judiciary Act, to review the judgments of the State Courts, because their judgments refuse to give effect to valid contracts, or because those judgments in their effect, impair the obligation of contracts. If we did, every case decided in a State Court could be brought here, where the parties setting up the contract, allege that the Court had taken a different view of its obligation to that which he held." Knox against Exchange Bank, 12 Wallace 379, 383. The decision of the Court in the case of New Orleans Water Works vs. Louisiana Sugar Refining Co, supra, is referred to with approval by this Court in St. Paul &c R'y. Co., vs. Todd County, 142 U. S., p. 286.

The sole question decided by the Supreme Court of Mississippi was, that the bonds which plaintiffs in error sought to enforce, were illegal and void, because of the lack of authority in the Levee Commissioners issuing them, derived under a State statute, to issue bonds in the form and of the character issued. This is not a Federal question. New Orleans Water Works vs. Louisiana Refining Co, 125 U. S., p. 18. There was no statute enacted by the State of Mississippi, or passed upon by the Supreme Court in this case, which impaired the obligation of the contract on which plaintiffs in error

rely, or which contravened Section 10 of Article 1, of the Constitution of the United States.

What statute of the State of Mississippi do plaintiffs in error show was passed by the Legislature of that State, and upheld or given effect to by the decision of the Supreme Court of that State in this case, which impaired the obligation of the contract entered into between the Levee Commissioners of District No. 1, of that State, and the holders of the bonds issued by the Act of March 17, 1871? It is true that the plaintiffs in error set forth the enactment of a number of statutes by the Legislature of the State of Mississippi, which they say impaired the obligation of the contract entered into between them and the Levee Commissioners of District No. 1. A careful examination and consideration of said statutes so referred to by plaintiffs in error, will bring this Court to the conclusion, I feel sure, that none of them impair the obligation of the contract relied on by plaintiffs in error, as existing between them and the Levee Commissioners of District No. 1, or which contravene the provisions of Section 10 of Article 1 of the Constitution of the United States. But suppose they did? None of said statutes were passed upon or upheld by the Supreme Court of the State of Mississippi in the decision in this case, complained of by plaintiffs in error. In DeSaussure vs. Gaillard 127 U. S., p. 232, the Court says: "It thus appears, that in point of fact, the Supreme Court of the State of South Carolina, in its opinion in this case, passed upon the Federal question sought to be raised by the plaintiff as the foundation of his case, and decided it adversely to him, but the analysis of the case which we have made, shows clearly that the decision of that question was not necessary to the judgment.

Before reaching that question, the Supreme Court had already decided that the action of the plaintiff could not be sustained, according to the meaning of the provision of the statute under which it was brought. The decision of that point was final, and and was fatal to the plaintiffs' right of recovery. That question is not a Federal question. It does not arise under the Constitution of the United States, or of any law or treaty made in pursuance thereof. It is not a question, therefore, which, under this writ of error we have a right to review. We are not authorized to inquire into the ground and reasons upon which the Supreme Court proceeded in its construction of that statute. IT IS A STATE STATUTE, conferring certain rights upon suitors choosing to avail themselves of its provisions upon certain conditions, in certain cases. Who may sue under it, and when and under what circumstances, are questions for the EXCLUSIVE determination of the State tribunals whose judgment thereon is not subject to review by this Court." * * * * "It is a well settled rule, limiting the jurisdiction of this Court in such cases, that where it appears by the record that the judgment of the State Court might have been based either upon the law which would raise the question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the Court did in fact base its judgment upon such independent ground, and not on the law raising the Federal question, this Court will not take jurisdiction of the cause, even though it might think the position of the State Court an unsound one. Klinger vs. Missouri, 13 Wallace 257, 263. And it has been repeatedly decided, under Sections 709 of the Revised Statutes, that to

give this Court jurisdiction of a writ of error to a State Court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest Court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered, could not have been given without deciding it." Brown vs. Atwell, 92 U. S., 327, Citizens Bank vs. Board of Liquidation, 98 U. S., 140; Chouteau vs. Gibson, 111 U. S., 200; Adams County vs. Burlington &c. R. R., 112 U. S., 123; Detroit City R. R. vs. Guthard, 114 U. S., 133; New Orleans Water Works Co. vs. Louisiana Refining Co., 125 U. S., p. 18; Baltimore Traction Co. vs. Baltimore Belt R. R. Co., 151 U. S., p. 137.

The result reached by the Supreme Court of Mississippi was right, and can rest on ground broad enough to cover the entire case, without considering the Act of the Legislature of that State of March 17th, 1871, Acts of 1871, p. 1, and by virtue of which the Levee Commissioners of District No. 1, were organized, and the bonds sued on in this suit, were issued.

Plaintiffs in error do not show by the original bill in this suit, that they are the owners of the bonds set forth therein, and unless they are shown to be the owners of said bonds, or have the right to maintain an action thereon on some other ground, are not entitled to the relief prayed for, or to any relief.

Plaintiffs in error are not entitled to recover on the bonds sued on, because at the time of the institution of their suit, said bonds were barred under the Statute of Limitations of the State of Mississippi. The bill shows that none of the bonds upon

which said suit is founded, matured later than January 1st, 1881. The suit by plaintiffs in error on said bonds, was instituted originally, in the Chancery Court of Hinds County, Mississippi, on the 17th day of August, 1888. There was therefore, seven years, seven months and sixteen days between the time when the latest in maturity of said bonds matured, the right of action of plaintiffs in error on said bonds accrued, and when said suit was instituted.

The Statute of Limitations in Mississippi, applicable to the case at bar, are Chapter 26 of the Acts of 1873, page 42, Sections 2147, 2148, 2150 and 2175 of the Code of 1871; and Sections 2664, 2665, 2667, 2669, 2692 and 2696 of the Code of 1880, and which are as follows:

"CHAPTER XXVI.

AN ACT entitled an Act to amend the Statute of Limitations relating to sealed instruments.

Section 1. Be it enacted by the Legislature of the State of Mississippi, That all actions of debt or covenant, founded upon any bond, obligation or contract under seal, or upon the award of arbitrators, shall be commenced within seven years next after the cause of such action accrued, and not after

Sec. 2. Be it further enacted that this Act take effect upon its passage.

Approved, April 19, 1873."

"ARTICLE I. (Code of 1871.)

ACTIONS CONCERNING LAND.

Sec. 2147. No person shall make an entry, or commence an action to recover any land, but within ten years next after the time at which the right to

make such entry, or to bring such action shall have first accrued to some person through whom he claims: or if such right shall not have accrued to any person through whom he claims, then within ten years next after the time at which the right to make such entry or to bring such action, shall have first accrued to the person making or bringing the same: PROVIDED, ALWAYS, that if, at the time at which the right of any person to make an entry, or to bring an action to recover any land, shall have first accrued as aforesaid, such person shall have been under any of the following named disabilities, that is to say: infancy, coverture, imprisonment, idiocy, lunacy, unsoundness of mind, or absence beyond the limits of the United States, on business of this State, or of the United States, then such person, or the person claiming through him may, notwithstanding the period of ten years hereinbefore limited shall have expired, make an entry, or bring an action to recover such land at any time within ten years next after the time at which the person to whom such right shall have first accrued as aforesaid, shall have ceased to be under any such disability, or shall have died, (whichever shall have first happened); but when any person, who shall be under any of the disabilities hereinbefore mentioned, at the time at which his right shall have first accrued as aforesaid, shall depart this life, without having ceased to be under such disability, no time to make an entry, or to bring an action to recover such land, beyond the said period of ten years next after the time at which such person shall have died, shall be allowed, by reason of the disability of any other person.

Sec. 2148. No person claiming any land in equity, shall bring any suit to recover the same, but

within the period during which by virtue of the provisions hereinbefore contained, he might have made an entry, or brought an action to recover the same, if he had been entitled at law to such estate interest or right, in or to the same, as he shall claim therein in equity: provided, that in every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land, of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before the time at which such fraud shall, or, with reasonable diligence, might have been first known or discovered.

Sec. 2150. When any mortgage or deed in trust shall be given, or shall have been given on any real or personal estate, or when any lien shall be given by law, to secure the payment of any sum of money specified in any writing, no action or suit, or other proceeding, shall be brought or had upon such lien, mortgage or deed in trust, to recover the sum of money so secured, but within the time that may be allowed for the commencement of an action at law upon the writing in which the sum of money secured by such mortgage or deed of trust may be specified; and in all cases where the remedy at law to recover the debt shall be barred, the remedy in equity on the mortgage shall be barred.

Sec. 2175. Bills for relief, in case of the existence of a trust, not cognizable by the Courts of Common law, and in all other cases not herein provided for, shall be filed within ten years after the cause thereof shall accrue, and not after; saving, however, to all persons under disability as hereinbefore provided, the like period of time, after such disability shall be removed.

CHAPTER 76. (Code of 1880.)

AN ACT in relation to limitation of Actions.

ACTIONS CONCERNING LAND.

Sec. 2664. No person shall make an entry, or commence an action to recover any land, but within ten years next after the time at which the right to make such entry, or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within ten years next after the time at which the right to make such entry, or to bring such action, shall have first accrued to the person making or bringing the same; PROVIDED, ALWAYS, that if, at the time at which the right of any person to make an entry, or to bring an action to recover any land, shall have first accrued as aforesaid, such person shall have been under any of the following named disabilities, that is to say: infancy or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding the period of ten years hereinbefore limited shall have expired, make an entry or bring an action to recover such land, at any time within ten years next after the time at which the person to whom such right shall have first accrued as aforesaid, shall have ceased to be under any such disability, or shall have died, (whichever shall have first happened); but when any person, who shall be under any of the disabilities hereinbefore mentioned, at the time at which his right shall have first accrued as aforesaid, shall depart this life, without having ceased to be under such disability, no time to make an entry, or to bring an action to recover such land, beyond the said period of ten years next after the time at which such person shall have died, shall be allowed, by reason of the disability of any other person.

Sec. 2665. No person claiming any land in equity, shall bring any suit to recover the same, but within the period during which by virtue of the provisions hereinbefore contained, he might have made an entry, or brought an action to recover the same, if he had been entitled at law to such estate, interest or right in or to the same as he shall claim therein in equity; PROVIDED, that in every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land, of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at, and not before, the time at which such fraud shall, or, with reasonable diligence, might have been first known or discovered.

Sec 2667. When any mortgage or deed of trust shall be given on any real or personal estate, or when any lien shall be given by law, to secure the payment of any sum of money specified in any writing, no action or suit, or other proceeding, shall be brought or had upon such lien, mortgage or deed of trust, to recover the sum of money so secured, but within the time that may be allowed for the commencement of an action at law, upon the writing in which the sum of money secured by such mortgage or deed of trust may be specified; and in all cases where the remedy at law to recover the debt shall be barred, the remedy in equity on the mortgage shall be barred.

Sec. 2669. All actions for which no other period of limitation is prescribed shall be commenced within six years next after the cause of such action accrued, and not after.

Sec. 2692. The several periods of limitation prescribed by this chapter, shall commence from the date when it shall take effect, but the same shall not apply to any actions commenced, nor to any cases

where the right of action or of entry shall have accrued before that time, but the same shall be subject to the laws now in force; but this law may be pleaded in any case where a bar has accrued under the provisions thereof.

Sec. 2696. Bills for relief, in case of the existence of a trust, not cognizable by the Courts of Common law, and in all other cases not herein provided for, shall be filed within ten years after the cause thereof shall accrue, and not after; saving, however, to all persons under disability, as hereinbefore provided, the like period of time after such disability shall be removed.

The Statute of Limitations was expressly pleaded in the demurrer of the Louisville, New Orleans & Texas Railway Company, defendant in error, and said defense is available in equity by demurrer, when the bill shows that the bar has attached. Nevitt vs. Bacon, 3 George Miss. Rep., 212; Matthews vs. Sontheimer, 10 George Miss. Rep., 114; Nixon vs. Miller, 11 S. & M., Miss. Rep. 594

Plaintiffs in error seek to avoid the bar of the Statute of Limitations by alleging that there was no person to sue, and therefore, the Statute of Limitations did not run. What in law, prevented the plaintiffs in error from suing the very same parties whom they have sued in this action, before the bar of the Statute of Limitations attached? Unquestionably, nothing. By examination of the Act of April 11, 1876, page 166 of the Acts of 1876, the Court will find that the State of Mississippi and the Auditor and Treasurer thereof, as Ex-officio Liquidating Levee Commissioners, could have been sued on the 11th day of April, 1876, as well as they could be on the 18th day of August, 1888. A Court of Equity will refuse to aid a complainant in the assertion of

a stale demand, where the party has slept on his rights, or has acquiesced for a great length of time. Perry on Trusts, Sec. 228, p. 287.

By Section 10 of the Act of March 17, 1871, page 1, plaintiffs in error had given to them, by law, an easy, simple and complete remedy for the collection of the taxes provided for the payment of their bonds, and if they declined to avail themselves of its provisions, while in force, and have suffered it to be lost by lapse of time, or repealed by the Legislature, their own negligence can give them no right to call into action the power of a Court of Chancery. No reason is assigned why plaintiffs in error did not avail themselves of the remedy given by mandamus, as provided for by Section 10 of said Act of March 17, 1871, and as the record stands, it would seem to have been the result of mere negligence and laches, and as said by this Court in McNnight vs. Taylor, 14 U S. (1 Howard) p. 551, and Piatt vs. Vattier, 9 Peters U. S., p. 404: "There must be conscience, good faith and reasonable diligence, to call into action the powers of a Court, and when these are wanting, the Court is passive, and does nothing." So holds this Court in Hume vs. Beales, Executor, 17 Wallace, p. 348, and in which the Court says: "It is an established rule with Courts of Equity, independent of any statute limiting the time within which suits can be brought, that they will not entertain stale demands."

Plaintiffs in error show by their original bill, that defendant in error acquired title to the land on which they seek to impress a charge for the payment of the bonds held by them, by purchase under a decree rendered by the Chancery Court of Hinds County, Mississippi, in the case of Green against Gibbs, reported in 54 Miss. Reports, p. 594.

By act of the Legislature of the State of Mississippi, approved April 11, 1876, Acts of 1876, p. 174 et seq, the Levee Board of District No. 1, and the officers of Commissioners, Secretary, Treasurer and Collector of said Levee District, were abolished, and the Auditor of Public accounts and the Treasurer of the State were constituted and appointed the Levee Board of District No. 1, ex-officio, and providing that said Auditor and Treasurer, as said ex-officio Levee Board, should discharge all of the duties before that time exercised and enjoyed by said Levee Board.

And by Act of the Legislature of April 11, 1876, Acts of 1876, page 166, it was provided that the office of Liquidating Levee Commissioners as then existing, should be abolished, and constituting the Auditor of Public Accounts and the Treasurer of the State, Liquidating Levee Commissioners, ex-officio, and prescribing the duties of said Auditor and Treasurer and ex-officio Liquidating Levee Commissioners. Section six of said last named Act, provided how all lands lying in the levee district therein mentioned, and being Levee Districts Nos. 1 and 2, were to be redeemed. Section 13 of said act, provides that if any of the lands mentioned in said act should not be redeemed or purchased as therein provided, on or before the the first day of January, 1878, that no further time for redemption should be allowed, and that the title to said land should thereafter be vested in the State of Mississippi.

The land in this suit, which the defendent in error, the Louisville, New Orleans & Texas Railway Company claims to own, was acquired by the Memphis & Vicksburg Railroad Company by purchase from Gwin and Hemingway, Auditor and Treasurer of the State of Mississippi, and ex-officio Liquidating

Levee Commissioners, and Commissioners of the Chancery Court of Hinds County of said State in the case of Green against Gibbs et al., supra, and said purchase was made under authority of said Court and decree passed in said case of Green vs. Gibbs, by said Chancery Court of Hinds County, Mississippi, on the 16th day of September, 1881. An examination of the case of Green vs. Gibbs, 54 Miss., p. 592 et seq., will disclose the fact that the proceeding therein, was one on the part of the owners and holders of bonds of the Board of Mississippi Levee Commissioners, to liquidate outstanding liabilities incurred by the general Board of Levee Commissioners organized under act of the Legislature of the State of Mississippi, approved December 2, 1858, to subject to sale for the payment of said bonds, land held by said Board of Liquidating Levee Commissioners of the State of Mississippi, the Auditor and Treasurer thereof, as the successors in title and trust of said Board of Liquidating Levee Commissioners, and which had been acquired by said Board of Liquidating Levee Commissioners or its said successors, under, and in accordance with the provisions of an act, entitled "An Act to provide for the payment of all debts and liabilities contracted or assumed, and all script or evidence of debt issued by the General Board of Levee Commissioners, organized under an act approved December 2, 1858, and also for the payment of debts and liabilities incurred or assumed by any county for work and labor done, or material furnished, prior to the first day of January, 1862, in any county included in the Levee District created by the Act of December 2, 1858, aforesaid, whether such debts or liabilities incurred or assumed before or after the passage of the Act aforesaid." Approved February 13, 1867, see Act of 1867, page 237.

Section 13 of said Act of February 13, 1867 is as follows:

"If, at the sale of any land for taxes under the provisions of this Act, the amount of taxes due thereon be not bid, the same shall be struck off by the Sheriff to this Board, who shall hold the same, subject to redemption, in the manner before stated, and if not redeeemed, the same shall be sold and disposed of, and the money used and applied in the manner above specified, relative to the bonds belonging to the General Board of Levee Commissioners aforesaid, and all the lands acquired by this Board under the provisions of this act, or which belong to the General Board of Levee Commissioners as aforesaid, shall be exempt from State taxation for levee purposes or otherwise, until the same shall be sold or disposed of by this Board. Provided, however, that any party, seeking to redeem any lands struck off to this Board under the provisions of this act, shall, before he is permitted to redeem the same, pay all State, County any Levee taxes that would have been due and payable on said land if the same had not been struck off to such Board, but had remained the property of the person offering to redeem, and it shall be the duty of the President of this Board, on the tender of any such taxes, forthwith to pay the same to the party entitled thereto."

In said case of Gibbs against Green, supra, the Supreme Court of this State says: 'The Act of February 13, 1867, was a Legislative proposition to the holders of claims against the old levee board of 1858, by which they were asked to submit to heavy sacrifice of the debts due them, and to accept in lieu thereof, the new bonds to be issued by said Act. For the extinguishment of these new bonds, a specific tax of five cents per acre in some of the counties, and

of three cents per acre in others, was levied upon all the lands in the Levee district, which tax it was declared shall continue until a sufficient sum is collected with which to pay off all the debts and liabilities contracted or assumed, and all the script or the evidences of debt issued by the General Board of Levee Commissioners organized under the Act approved December 2, 1858. The taxes to be raised under this scheme, went into the hands of the Board of Commissioners for the purpose of liquidating the new bonds authorized to be issued in the extinguishment of the old debts. All lands which might be sold in future for the payment of the specific tax imposed by the Act, became the property of the commissioners for the like purpose to pay the new bonds and the holders of the old claims against the Levee Board of 1858, with singular unanimity, availed themselves of the invitation extended by the Act, surrendered their evidences of debt long past due, which bore interest at the rate of 8 per cent. per annum, and upon which the accumulations of interest amounted to some 50 per cent. upon the face of their demands. They received in lieu of them, new bonds for the face of their claims only, bearing 5 per cent. interest, and due at intervals of from one to five years.

If anything is settled in American law, the Act of 1867 became a contract between the State of Mississippi and the authorities of the Levee District on the one hand, and the holders of the new bonds on the other, which it was not competent for either party thereafter materially to modify, without the consent of the other. This immunity from change would not extend to any mere matters of detail, even though one party or the other, might construe modifications made as more or less favorable or unfavorable to their respective rights, and the presumption would always

be in favor of the validity of such changes in the system, as the legislature might from time to time adopt. But no fundamental alterations which affect the value of the security carved out for the bond holders was permissible. It was manifest that the security in this case consisted of the tax which was fastened upon the land, until in the language of the act, a sufficient sum is collected to pay of all the debts and of the lands which should be forfeited to the commissioners for non-payment of the tax. The tax and the lands forfeited thereunder, alike, became a fund, pledged by the act, for the redemption of the new bonds, and it was thereafter, no more competent for the Legislature to repeal the tax, or to divert the lands, than it was for them, in express terms, to repudiate the bonds. Among the countless cases in support of this well settled proposition, we cite only two, which are strikingly illustrative of the principles upon which it rests: Von Hoffman vs. Quincy, 4 Wallace 535; McGee vs. Mathis, 4 Wallace 143.

The doctrine deducible from these and other cases is, that Legislative contracts, like that embraced in the act of 1867, are inviolable, and that so long as the Courts can find persons, machinery ~~or franchises~~ by which their obligations can be enforced no measures will be untried to compel performance.

By Section 13 of said Act of 1867 creating the Liquidating Levee Board all the lands acquired by said Board under provisions of said Act were exempt from taxation for levee purposes or otherwise, until the same were disposed of by said Board. The taxes, therefore, imposed by the Act of March 17, 1871, creating Levee District No. 1, were not a lien on the lands held by the Liquidating Levee Board in its hands, or in its successors in title and trust, it being the intention of the law that the liq-

uidating levee tax should be a first and paramount lien on said land, and the Supreme Court of Mississippi, in its decision in the suit of Gibbs vs. Green, supra, so held.

It is well settled, that legislative exemptions from taxation are valid, that such exemptions may be perpetual in their duration, and in some cases, beyond legislative interference; as in the case of the Liquidating Levee lands, where the act creating the Liquidating Levee Board, became a contract. Reese vs. City of Watertown, 19 Wallace U. S. Rep. 107.

Plaintiffs in error had full notice of the Liquidating Levee Act, of February 13, 1867, when they acquired the bonds issued by Levee District No. 1, the exemptions contained therein, and that the lien created thereby in favor of the Liquidating Levee Board and the holders of its bonds, was superior to all others, said act having been passed, and the sales of lands of which plaintiffs in error complain, having been made prior to the passage of the act authorizing the issuance of bonds under which they claim. Plaintiffs in error, in their original bill, state that, prior to the act under which the bonds owned by them were issued, namely, in 1868, 1869 and 1870, there was a large amount of land lying in Levee District No. 1, pretended to have been sold for the non-payment of the Liquidating Levee taxes, assuming that the lands administered and sold in the case of Green vs. Gibbs, supra, had been conveyed to the Liquidating Levee Board in those years. Such being the case, it is now too late to enquire into the validity of the titles acquired by said Board its vendees and privies, because more than five years have elapsed since the sale of said land. Acts of 1860, p. 216; Acts of 1873, p. 153.

By an examination of the above Act of 1860, the Court will see that the manifest intention and purpose of the Legislature, was to make valid to all intents and purposes, all tax titles, and not to allow any tax title thereafter acquired, to be disputed or impeached, except upon proof that the taxes had been paid, or of fraud or mistake, in the sale or assessment after five years. Metcalf vs. Perry 66 Miss., p. 68; Sigman vs. Lundy, 66 Miss. 522.

Plaintiffs in error do not pretend that the taxes were paid, or that there was fraud or mistake in the sale or assessment. They claim that the land was sold on a wrong day, without saying what land was sold, or what was the right day. Will the Court assume that the day upon which said land was sold, was the wrong day, without being informed by plaintiff's in error, as to the day on which it was sold, that the Court may determine whether such was the right or the wrong day?

The Liquidating Levee law of February 13, 1867, required sales of land to be made on the second Monday of May. I submit, that if the sales were commenced on that day, and regularly continued from day to day, that a sale made on another day than the second Monday of May, would be a valid sale.

Plaintiffs in error also allege that the Sheriffs who made said sales had not, before making same, executed the bonds as required of them by law. Under the above Acts and the decisions of the Supreme Court of Mississippi, that makes no difference. It was a condition which the Legislature could have dispensed with without violating any Constitutional provision. Nevin vs. Bailey, 62 Miss. 435; Hardie vs. Chrisman, 60 Miss. 671.

The sale of land to the Liquidating Levee Board

in 1868, 1869 and 1870, was valid, and all the subsequent sales of said land were void, whether made to the State for the use of the Levee Board of District No. 1, or to said Levee Board, because if validly held by said Liquidating Levee Board, said land was not, by the terms of the Act of February 13, 1867, again subject to be sold for taxes so long as it was held by said Liquidating Levee Board. Mayer vs. Peebles, 58 Miss. 633. Said sales were made after the passage of the Act of 1860, and consequently, all matters which might have been dispensed with by the Legislature, and which were not Constitutional requirements, were cured by that Act, which applies to all tax sales. Belcher vs. Mhoon, 47 Miss. 613; Green vs. Wilson, 58 Miss. 752; Metcalf vs. Perry, 66 Miss. 68; Sigman vs. Lundy, 66 Miss. 529.

The sales of 1868, 1869 and 1870 to the Liquidating Levee Board, being valid and unimpeachable, it follows that the title held by defendant in error, the Louisville, New Orleans & Texas Railway Company, and acquired under the decree of the Chancery Court of Hinds County as hereinbefore set forth, is valid, and cannot be set aside, or in anyway interfered with. The Act of 1860, supra, after setting forth the only cause for which a tax title may be impeached at any time, proceeds to enact a limitation after which such title shall not be impeached for any cause, at all. It provides that no suit shall be brought to set aside any such title after five years. The meaning of said Act is obvious. It requies no construction. It means to forbid a suit against such title after five years from day of sale. The only question is, could the Legislature pass such an act? Was it within legislative power? In Nevin vs. Bailey, 62 Miss. p. 435, the

Supreme Court of Mississippi construes a similar statute, being Section 1709 of the Code of 1871, and in Metcalf vs. Perry, 66 Miss., p. 68, and Sigman vs. Lundy, 66 Miss. 529, construes said Act of 1860. Said Court says: "It is unnecessary to determine whether it is a statute of limitation, or a curative act. Its effect as to sales after the passage of the law, after the lapse of the prescribed time, is to cover all defects which the Legislature could cure; to dispense with all requirements which it could have dispensed with." In the language of the Court: "If the sale was made on the wrong day, or at the wrong place, the effect of the original statute is to write into the original act, that the sale might be made on that day, or at that place." Plaintiffs in error do not show to the court what particular lands were illegally sold and held by the Liquidating Levee Board, nor do they show what particular land was purchased for, or the title to which was vested in the Levee Board of District No. 1. Their bill is too vague and indefinite to ground any right to relief upon. Even had they set out therein, the particular land claimed, upon which they had a lien, I contend that the Liquidating Levee tax was a prior lien thereon to the tax imposed by the act creating the Levee Board of District No. 1. Plaintiffs in error will not insist that none of the land held by the defendant in error, the Louisville, New Orlean & Texas Railway Company, was properly sold to the Liquidating Levee Board, and if such be the case, said defendant in error is certainly entitled to hold said land free from any interence upon the part of plaintiff in error, or anyone else. Suppose the tax claimed to be due to the Levee Loard of District No. 1, on any of the land held by said defendant in error, was paid; it certainly would not be proper to require said defendant in error to

set up that fact, before the plaintiffs in error had shown any defect in the title of defendant in error, or the particular land upon which they claimed to have a lien. It was incumbent on plaintiffs in error to have shown by their original bill, each particular tract of land which they claim was not subject to the Liquidating Levee tax, and upon which taxes to Levee District No. 1 were due, and that as creditors of the Levee Board of District No. 1, that they were entitled to have said lands upon which said last mentioned tax was due, administered, and sold for the payment of the bonds owned by them. This was indispensably necessary, that the Court might judge of the questions presented. The bill shows that the records containing such information, were public records, were easily accessible, and that all the matter which was necessary, in order to make the allegations of said bill clear, and the issues therein specific, and so definite as to be admitted or denied, according to the truth thereof, was within the reach of plaintiffs in error, and should have been presented to the Court, and plaintiffs in error are therefore, not entitled to any discovery at the hands of defendant in error, who, if willing to give it, could not do so, because of their failure to furnish the description of the lands on which they claim the levee tax imposed by the Act of March 17, 1871 was due.

The original bill of plaintiffs in error is multifarious, propounding as it does, several different and conflicting interests for adjudication, and joining defendants therein, whose titles to the lands sought to be held bound for bonds held by them and others, are directly antagonistic. Defendants in error hold title to the land referred to in said original bill, by separate and distinct titles. There is no community of interest in them, and they should not have been

joined together as defendants in this suit. The Act of March 17, 1871, placed a different value on the land in the levee district created thereby for the purpose of raising the levee taxes, placing a different value on cleared and improved land and that of uncleared land. The bill does not show how much of said land upon which plaintiffs in error claim to have a lien was cleared, and how much uncleared, and it would therefore be impossible for a Court to decree what amount of taxes was due on any particular piece of land, even if it was admitted that taxes were due, and plaintiffs in error entitled to said taxes. By examination of Section 8 of said Act of March 17, 1871, the Court will see that the ascertainment of the amount of cleared, improved and unimproved land, was a condition precedent to the legal imposition and collection of levee taxes under said act. The rate of taxation was fixed by said act, but before it could be collected an assessment had to be made of the land subject thereto. The bill does not show that any assessment was ever made of the lands sought to be charged with taxes. The taxes under said law were due annually, and the statute of limitations against each year's taxes, began to run from the time said taxes were due, and much of the taxes which plaintiffs in error seek to impress as a charge on the land owned by defendant in error, was barred by the Statutes of Limitations, at the time of the institution of this suit, and cannot be enforced against the land on which it may have formerly been due. A fortiori said taxes cannot be imposed on said lands in the hands of said Louisville, New Orleans & Texas Railway Company. No assessment of the lands in Levee District No. 1 having been made for levee purposes the Court cannot subject the lands held by defendant in error, to an assessment, in order to now

fix the amount that each piece of land should contribute, if bound at all, towards the payment of the demand set up by plaintiffs in error in this suit. 19 Wallace U. S., p. 107. This was a failure upon the part of the Levee Commissioners to discharge the duty required of them by law, and a remedy for which was clearly given to plaintiffs in error, and they cannot now ask the Court to do what the Commissioners should have done, and what they could have required done.

On the 2nd day of March, 1888, the Legislature of Mississippi passed an Act, entitled An Act to quiet and settle the title to certain lands in the Yazoo Delta, which were sold by the Commissioners of the Chancery Court for the First District of Hinds County, in the case of Joshua Green et al. vs. Hemingway and Gibbs, Treasurer and Auditor, and ex-officio Liquidating Levee Commissioners, (Acts of 1888, p. 40.) By the second section of which said Act, the Auditor of Public Accounts was required upon application made to him by any one who had purchased levee lands, from the Commissioners of the Chancery Court of Hinds County, Mississippi, in the case of Joshua Green et al. vs. Gibbs and Hemingway, Treasurer and Auditor, and ex-officio Liquidating Levee Commissioners, and upon payment to him in lawful money of the United States of all taxes that may have accrued on said land, without costs or damages since the date of the purchase thereof under the decree aforesaid, or on satisfactory evidence that such taxes had been paid, to execute to such applicant, a deed conveying the State's title to the land held by said applicant under said conveyance from said Commissioners of said Hinds County Chancery Court. By Section 7 of said Act of March 2nd, 1888, special provision

was made, both as to the terms on, and time within which the defendant in error, the Lovisville, New Orleans & Texas Railway Company, was allowed to acquire the title of the State of Mississippi to the land held by it, and acquired by the Memphis & Vicksburg Railroad Company, by purchase under said decree, in the case of Green vs. Gibbs, supra.

In the case of Bourborn, Shotwell et al. vs. Louisville, New Orleans & Texas Railway Company et al., 69 Miss., p. 541 et seq, the Supreme Court of Mississippi sustains the act of April 11th, 1876, (Acts of 1876, p. 166) by which the title to all lands sold for non-payment of levee taxes due to Levee District No. 1, and the other Levee Boards in said Act mentioned, was vested in the State of Mississippi, and says: "The fund specifically pledged to creditors of the Board, consisted of the tax imposed on the land by the Act, and that was declared not subject to repeal, alteration or suspension as against creditors. That was their security and the collection and application of money from that source was the remedy provided for them. These taxes were levied annually for 12 years commencing with the date of the Act of March 17th, 1871, and during that period, they were to be available for creditors, beyond the power of repeal, alteration or suspension, until all liabilities of the Board should be discharged.

It is true, that lands struck off to the Treasurer, at a sale for taxes due the Levee Board, and not redeemed, was declared in Section 13, to be a part of the levee fund, and subject to sale as the Board should order; BUT THIS WAS NOT PLEDGED TO CREDITORS, AS WERE THE TAXES, and there was no declaration that the provision on this subject was irrepealable, and it was repealable by the Legislature,

decree directing a sale of the land appears to have been entered by CONSENT, the sale made in accordance therewith, and the proceeds applied to the payment of the indebtedness of the Liquidating Levee Board, and more than seven years before the institution of this suit. To accept the statement of the case as made by the plaintiffs in error, it was like the enforcement or foreclosure of a mortgage by one holding a first or senior lien. The creditors of the Liquidating Levee Board holding the first and paramount lien, filed their bill to enforce their lien, and made the State of Mississippi, its Auditor and Treasurer, who were the holders of the second lien for the use and benefit of the plaintiffs in error, and other bond holders of Levee District No. 1, parties. It was their duty, if they desired to avail themselves of the land sold prior thereto, to the Liquidating Levee Board, as a fund from which to pay off the bonds of District No. 1, to have paid off the lien then existing in favor of said Liquidating Levee Board, which was paramount to all others, and having failed to show cause why said land should not be sold for the payment of the Liquidating Levee bonds, and not having set up their lien or claim upon the land decreed to be sold in that suit, and having stood by and permitted said lands to be sold, and innocent, bona fide persons to buy the same, without let or hindrance on their part, and thereby discharge a first lien, which in law they were bound to do, if they were to obtain any benefit of said lands, and to make large expenditures on said land, they are equitably estopped, now, from undertaking to avail themselves of any benefit growing out of any lien that they might have had.

If plaintiffs in error were entitled to have the proceeds of sale arising from the sale of land in the case of Green against Gibbs, applied to the payment of

the bonds held by them, they should have made an application to have the same so applied or to have resisted the confirmation of the report of sale before the Chancery Court of Hinds County, or claimed the funds in the hands of said trustees and to have the same applied, in the hands of their trustee, to the payment thereof. But no such steps were taken. Plaintiffs in error have neglected all proper means of redress, which, if timely applied for, would have corrected all the wrongs of which they now complain. They have been guilty of inexcusable laches, and should not for that, among other reasons herein given, obtain relief in this proceeding. By their tacit acquiescence in all the legislative enactments which they claim affect the bonds held by them, the sale of the Liquidating Levee lands under the decree in the case of Green vs. Gibbs, without offering any objection thereto, and the conveyance of said land to the Memphis & Vicksburg Railroad Company and the transfer of the same by said Memphis & Vicksburg Railroad Company to defendant in error, the Louisville, New Orleans & Texas Railway Company, they induced defendant in error to believe that they had no claim or demand against said land, or the proceeds of the sale thereof, and having by said acquiescence and failure to assert claim against said land, or the proceeds of the sale thereof, encouraged defendant in error to believe that the title to said land which they obtained was good. They can not therefore, now, assert a claim to said land, or said proceeds of sale, to the prejudice of defendants in error.

I submit respectfully, that a clear case of sufficient grounds on which the validity of the decree of the Supreme Court of Mississippi in the above case can rest, exists, and has been shown even if said Court,

was in error, as to the construction and effect given to the Act of 1871, by it, and as said in this Court in New Orleans Water Works Company vs. Louisiana Refining Company, 125 U. S., p. 38:

"When there is such distinct and sufficient ground for the support of the judgment of the State Court, we cannot take jurisdiction, because we could not reverse the case, though the Federal question was decided erroneously in the Court below, against plaintiff in error." Rector vs. Ashley, 6 Wallace 142; Clinger vs. Missouri, 13 Wallace 257; Steiner vs. Franklin County, 14 Wallace 15.

I therefore ask that the decision of the Supreme Court of Mississippi be affirmed, and the writ of error in this suit be dismissed.

WM. G. YERGER,
of Counsel for
Louisville, New Orleans & Texas Railway Co.,
Defendant in Error.

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356

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

AMOS WOODRUFF, ET AL, PLAINTIFF IN ERROR,

VS.

THE STATE OF MISSISSIPPI, THE DELTA AND PINE LAND COMPANY, THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILROAD COMPANY, ET AL, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR THE STATE OF MISSISSIPPI, DEFENDANT IN ERROR, ON THE QUESTION OF JURISDICTION.

FRANK JOHNSTON,
ATTORNEY-GENERAL OF MISSISSIPPI.

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The propositions contained in the assignment of errors, and upon which the plaintiffs in error contend that this cause is within the jurisdiction of this court, are in effect as follows:

1st. The decision of the State Court impaired the obligation of the contract under which the plaintiffs in error claim.

2d. The contract was adjudged by the State Court to be void, upon the ground that it was payable in terms, in gold coin.

3d. The State Court decided that the State had the power to pass a law by which any thing but gold and

silver coin could be made a legal tender for the payment of debt, contrary to Article 1, Section 10, of the Federal Constitution.

It is respectfully submitted to the Court, that the decision of the State Court now sought to be reviewed, is not of the character stated in the assignment of errors, but is essentially different, and that the case is not within the jurisdiction of this Honorable Court.

The following propositions are relied upon by the defendants in error:

FIRST.

The decision of the State Court only involved the construction or interpretation of a local State statute, it brought into view no Federal question, and denied to the plaintiffs in error no right or privilege claimed by them under Federal authority.

The question before the State Court was in respect to the validity of one million of dollars of bonds issued by a municipal corporation created by the State of Mississippi, and known as the Levee Board of District No. 1. The act creating this Levee Board was passed on March 17th, 1871, and the bonds, issued in the year 1882, are payable in express terms, "in gold coin of the United States of America."

The decision of the Supreme Court of the State was, that the Board, under the act of incorporation, had no power to issue bonds payable expressly and exclusively in gold coin. Under the statute creating this Board, it was given the power to issue not more than one million of dollars of bonds payable generally in dollars, and solvable in any kind of dollars that were legal tender; and the decision was that this did not confer upon the Board the authority to issue bonds, payable by their terms expressly and exclusively in gold coin.

The question arose upon the construction or interpretation of the State statute, and it involved simply a construction of the statute in respect to the precise extent of the power that was conferred upon the Board of Levee Commissioners by the Legislature of the State. The Board was a creature of the statute, possessing only the powers expressly conferred upon it by the act creating it, and the interpretation of this local statute in respect to the extent and character of the powers and authority of this Board, upon the general rules and principles of jurisprudence of the State, does not present nor involve, it is respectfully submitted, any Federal question that brings the case within the appellate jurisdiction of this Court.

If the precise question as to the validity of these bonds was now before this Court for decision, it would involve merely the construction of the local statute, and the inquiry would be whether the limited statutory authority conferred upon the Board of Levee Commissioners to issue bonds payable in dollars generally, conferred the power to make special gold contracts, payable exclusively, according to the terms of the contract, in gold coin dollars. The two kinds of contracts are essentially different. One would stand solvable in any kind of legal tender money, while the other could only be satisfied by the payment or delivery of gold coin dollars. The inquiry involves the doctrine of *ultra vires*, and the consideration and application of the general principles of jurisprudence that are administered by the courts of the State in the construction of contracts and statutes.

This Court might differ in its views from the Supreme Court of the State, in respect to the proper construction of the local statute, but this would involve a difference of judicial views, not upon a Federal question, but merely as to the scope and extent of the special

powers conferred by a State statute upon this Board of Levee Commissioners.

It was assumed by the State court, in deciding that the Levee Board did not have the power to make special gold contracts, that gold contracts payable in express terms in gold coin, were solvable alone in gold coin, that they called for gold, and the obligation was to pay in gold coin.

Involved necessarily in the conclusion reached by the State court, is the consideration that the Levee Board had no means of procuring gold coin. All the taxes levied by the act of March 17, 1871, and all taxes laid by the State and counties, are payable in any kind of legal dollars, and are not required to be paid in gold coin.

Act March 17, 1871, p. 37.
Code of 1871, §1692.

With gold coin at a premium, as was the case at the time of the passage of the act and for several years thereafter, no taxes would have been paid in gold by the taxpayers. The taxes levied by the act of March 17, 1871, constituted the only source of revenue or income to the Levee Board.

The Levee Board, therefore, by the statute creating it, had no power or means of procuring gold coin for the discharge of its obligations. At the date of the act, no gold coin was in circulation. Gold coin was not then the basis of contracts, except where expressly provided by the terms of the contract itself, and legal tender treasury notes formed, as was said by this Court, "*the universal measure of values.*"

Legal Tender Cases, 12 Wall.—530.

The local statute contemplated and intended that the contracts of the Levee Board should be made on the basis of money or dollars generally, such as then formed the "universal measure of values," and not

upon the basis of a special coin then at a high premium, that had ceased to circulate as money, and which was bought and sold, in fact, as a commodity.

The local statute contemplated that the Levee Board would make its contracts payable generally in dollars, and to this end was given the power to collect taxes payable in dollars generally with which to meet its obligations. No authority or power was given to the Board to exact its taxes in gold coin, and it was not intended that it should make special gold contracts. These considerations, and these considerations alone, it is respectfully submitted, are involved in the decision of the State Court. It is further submitted, that it is within the exclusive jurisdiction of the State Court to construe the local statutes of the State, where a Federal question is not necessarily involved, and if the ground of the decision is such that a Federal question is not necessarily involved, this Court will not take jurisdiction.

Murdock v. City of Memphis, 20 Wall., 590.
New Orleans v. Water Works Co., 142 U. S., 79.
O'Neil v. Vermont, 144 U. S., 336.
Bridge Co. v. Henderson City, 141 U S., 689.

The question in the case of *The Quincy, Missouri & Pacific R. R. Co. v. Harris*, was the validity of a contract for stock made by a county under a Missouri statute, upon construction of which the State court decided the contract to be void. On writ of error this Court declined to review the decision, upon the ground that no Federal question was involved in the decision in respect to the power of the municipal corporation to make the contract, and that it was the province of the State courts to construe local State statutes.

The Quincy, Missouri & Pacific R. R. Co. v. Harris, 144, U. S. 210.

No Federal question is brought into view by the decision of the State Court, and no right, claim or privi-

lege of the plaintiffs in error has been drawn in question, or denied to them.

The State has passed no law declaring that contracts payable expressly in gold coin are illegal, or denying to persons *sui juris* the right to make contracts as they please and in any particular kind of legal dollars, or in dollars generally. The State has made no regulation on the subject. The act of March 17, 1871, creating this Levee Board does not undertake to regulate the currency, or prescribe what kind of dollars are legal tender. And the decision of the Court is, that in creating this Levee Board, and providing its revenues, it was contemplated by the Legislature that it should not make special contracts payable exclusively in gold coin without the power to provide the gold coin with which to meet its obligations.

The consideration also was involved, that gold coin was then at a high premium, and not in circulation, and the limit of the power to issue bonds was one million of dollars on the basis of legal tender notes, then the "*universal measure of values.*"

In the State of Mississippi there is no law regulating, directly or indirectly, any matter of currency, nor the question of legal tender in the payment of debts. All persons can make their contracts in any mode, or upon any terms permitted by Federal authority. Neither special gold coin or silver coin contracts, or contracts for any particular kind of legal currency, or contracts payable generally, are touched by the decision of the Supreme Court of the State. But all such questions are governed by the Federal laws and the general principles of the jurisprudence of the country.

But in creating this Levee Board for a limited and special purpose, endowed only with the special powers expressly conferred upon it, and none other, the Legislature of the State simply did not see proper to

confer upon these Commissioners the power of making special gold contracts.

The bonds, contracts and obligations of the State and counties are all payable generally in dollars, and solvable in any legal dollars or money. And no county or municipal corporation is invested with the power of issuing bonds or warrants calling exclusively for coin or any special kind of dollars.

The plaintiffs in error complain that some right under Federal authority has been denied them. Its exact character is difficult to perceive or define. It cannot be possible that they have the right, under Federal authority, to require that all levee boards and municipal corporations shall be given authority by State legislation to make special gold contracts.

Inasmuch as the State had the power to deny to the Levee Board all authority to issue bonds of any kind, it had the right to withhold the power to make bonds payable exclusively in gold coin, or to qualify the powers granted, in any manner that it saw proper.

If the State has not this power, then it would be forced to change its entire scheme of revenue, both for itself and for its counties and municipal corporations, and exact part of its taxes in coin to meet the coin obligations. But this it could not do under the Legal Tender acts of Congress, which declare the treasury notes *legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest on the National debt.* A State cannot discredit the legal tender notes of the Government by exacting its revenues in coin.

Without the power to exact its taxes in gold coin, it would be an extraordinary predicament if a State cannot provide that its public obligations and the contracts of its municipal corporations shall be made payable in dollars generally. So that they may be

honorably paid, according to the law of the land, in any of the kinds of dollars which the State may exact in payment of its taxes, and which are legal tender under the Federal laws.

This is the full extent and operation of the special statute, according to the construction given to it by the Supreme Court of the State.

SECOND.

The objection contained in the first assignment of errors that the decision of the State court itself impaired the obligation of the contract, and thus presents a Federal question, is wholly untenable.

The rule has been repeatedly declared and is well settled, that the fact that a contract is decided by a State Court to be invalid, which this Court might hold to be valid, does not confer the appellate jurisdiction to review the decision of the State Court.

Railroad Company v. Rock, 4 Wall., 180;
Water Company v. Easton, 121 U. S., 329;
Railroad Company v. The People, 12 Wall,. 388;
Murdock v. Memphis, 20 Wall., 590;
Kreiger v. Railroad Company, 125 U. S, 44.

The decision in *Gelpe vs. Dubuque*, cited in the brief of Mr. Calhoun and Mr. Green is wholly inapplicable to the case now before the Court.

That case is peculiar in its facts, and in the application of the constitutional guaranty as to the obligation of contracts, to the decision of a State Court, which held a certain class of contracts to be void, and which overruled its former decisions adjudging such contracts to be valid.

It has no relation to the questions now being considered.

THIRD.

The State Court did not decide, that these contracts

are void because they are payable in gold; nor is the proposition involved in the decision that contracts payable by their terms expressly in gold coin, are, for that reason, illegal and void.

The ground upon which the decision of the Supreme Court of the State rests, is, that the special statute of the State creating the Levee Board did not authorize the Board to issue special gold bonds, payable exclusively in gold coin. It is not, that special gold contracts are illegal, but that this Levee Board had no authority to make special gold contracts.

The decision does not involve the question as to what kind of dollars are legal tender, nor does it necessarily involve the legal proposition that a contract payable expressly in gold dollars can or cannot be paid in any other kind of dollars.

It is assumed that an obligation to pay so many gold coin dollars, ought to be paid according to its terms in gold coin. This is unquestionably the moral obligation of such an agreement or contract. If it is paid in anything else than gold, it should be according to the value of the gold dollar, and this in direct legal effect, would be a breach of the contract and the payment of damages for the breach of the obligation.

It is expressly assumed in the opinion rendered by the Supreme Court of the State, that special gold coin contracts are legally solvable alone in gold coin, but this is not necessarily involved in the decision. It stands more in the light of one of the reasons or considerations operating upon the Court in the inquiry respecting the interpretation of the powers of the Board under the statute, than the decision of a distinct or independent proposition.

The general question before the State Court was not whether treasury notes are a legal tender for the payment of special coin contracts, but whether a muni-

cipal board had the statutory power, under a local statute, to make special gold contracts. In a word, as a matter of the construction of a local statute, were the bonds valid or invalid, not depending upon any acts of congress, but arising upon and confined to the question of the power of the Board.

If the State court had placed its decision that these bonds were void, upon the ground that special gold coin contracts, as such, are illegal, it would have decided a Federal question, and would have thus denied the right to make contracts payable expressly in gold coin.

Instead of this, the State court decision distinctly recognizes gold contracts as legal contracts, but it declared these particular contracts void because of the want of authority in the Levee Board to issue them. *If the corporate power to make the contracts had existed, the contracts would have been held valid.*

The question might then have arisen, whether the owners of the bonds could be required to accept legal tender notes, or whether they could exact gold coin or its equivalent in payment of their bonds.

If the decision, in such an event, had been in favor of the owners of the bonds, they would have had no right to complain, for no right or immunity claimed by them uuder Federal authority, would have been denied them. They would then be getting precisely what they had contracted for, and their contract would be fulfilled according to its very terms by payment in the most valuable kind of dollars.

But the case as it stands in this Honorable Court, falls far short of presenting, from the jurisdictional point of view, the question as to what kind of dollars will discharge the bonds, for that inquiry is cut off *in limine* by the decision of the State Court, that the bonds are void, for the want of power in the Board that issued them

This is logically the end of the inquiry, and it is useless to discuss the abstract question, whether, conceding that the bonds are valid, they are legally payable in gold coin or legal tender notes.

It is apparent, that the whole question recurs to, and turns upon, the authority of the Board to issue the bonds, and this involves merely the construction of the local statute according to its terms and intent. And this matter of the construction of the statute was determined upon the general rules and principles of the jurisprudence of the State applicable to the subject of the construction and interpretation of statutes, and involving no Federal question.

The question, from the jurisdictional point of view, is not different in its nature and character from the inquiry, whether this Levee Board had the power to make cotton contracts, or to enter into obligations payable in any other commodities, or to make contracts for gold or silver bullion.

A contract to pay so many dollars "in gold coin of the United States," in the language of this Court in *Bronson v. Rodes*, "*is in legal import, nothing else than an agreement to deliver a certain weight of standard gold to be ascertained by a count of coins each of which is certified to contain a definite proportion of that weight.*" It is essentially different from a general money obligation.

All general money obligations are entered into subject to the power of the sovereign or government to regulate the currency of the country, and it may be that a special coin contract would stand subject to the power of the goverment to regulate the weight and fineness of the coin. But subject to this single qualification, a special gold coin contract is an agreement, calling for the delivery of a certain weight of standard gold. In this view it is not different from a contract for bullion or any other commodity.

The State Court held, that the Levee Board had no power to make this sort of a contract.

Finally, if this Honorable Court assumes the jurisdiction of the case, the sole question involved would at last turn upon the construction of the local statute, and depend upon the inquiry whether a limited statutory power given a municipal corporation to issue bonds payable generally in dollars, was a grant of power to make special contracts for the payment or delivery of a particular kind of coin dollars, then at a high premium, not constituting the measure of values, but bought and sold as a commodity. This question of power or agency stands wholly apart from any Federal question. It is entirely immaterial, so far as the jurisdictional question is concerned, whether the decision of the State Court is correct or erroneous.

Water Co. v. Easton, 121 U S., 329.
Kreiger v. Railroad Co., 125 U. S., 44.

It is respectfully submitted that the case is not within the jurisdiction of this Honorable Court.

FOURTH.

(a) *The State Court has not decided that the State has the right to declare what shall be legal tender for the payment of debts, or to make anything other than gold or silver legal tender, as erroneously assumed in the assignment of errors.*

Conceding for the argument that the State Court decided that treasury notes were not legal tender for the payment of special gold contracts, it does not appear that any right or claim of the bond-holders existing by Federal authority was denied them, on the contrary, the contract if valid, would have called for gold dollars.

But the Court did not decide that the State had the power to make anything other than gold and silver

legal tender, or to regulate the question of legal tender for debts in any manner whatever.

The Act of March 17, 1871, does not deal with the subject of legal tender. No law of the State prohibits the making of contracts for coin, and there are no laws of the State relating to the subject. The effect and intent of the special statute, under the decision of the Court, was to authorize the Levee Board to collect taxes in currency, and to issue bonds payable generally in the currency of the country.

A State unquestionably must have the power to withhold from its municipal corporations the authority to make special coin contracts, and it must be within the powers of a State to provide that the financial operations of its municipal corporations shall be conducted upon the basis of the general currency of the country, and not upon a special gold basis.

Neither the Legislature that passed the Act of March 17th, 1871, nor the Supreme Court of the State that construed this statute, has exceeded the powers of the State or infringed upon the jurisdiction of the Federal government.

(b). *If, however, the proposition is involved in the decision of the State Court, that contracts payable by their terms in gold coin, are solvable alone in gold coin, then this proposition has been correctly decided by the State Court.*

I again respectfully insist that this question is not here, nor is there any Federal question now before this Court for decision. The allusion in the opinion of the State court, to the the decision of this Honorable Court in the case of *Gay's Gold* was intended to show that the courts knew judicially that in 1871 gold was not in circulation as currency. It could be stricken from the opinion, and the decision would stand intact as the construction of the powers of the Levee Board

under the special statute. And moreover, the allusion in the opinion of the State Court in respect to special gold contracts being payble in gold, might be stricken out, or the entire opinion of the court, with all its reasons, might be obliterated, and the judgment of the Court would stand on the pleadings, as an adjudication that the contract was void because of the want of the power in the Levee Board to make the special gold contract And this would depend alone upon the local statute.

But this Honorable Court has held that gold contracts are solvable in gold coin according to their terms. It is true that in none of the decided cases was the special contract made subsequent to the passage of the Legal Tender Acts, but this is immaterial for the reason that the constitutional limitation in respect to the obligation of contracts does not apply to Federal legislation or the powers of Congress.

The same principles and reasoning that would apply, under the Legal Tender Acts, to contracts made prior to their passage would also apply to those made subsequent to the passage of the acts, the whole being a question as to the construction of the Federal statute.

The operation of the Legal Tender Acts is to make contracts payable generally in dollars, payable in any legal tender dollars, and special coin contracts are left payable according to their terms in coin dollars. This principle pervades all the decisions of this Court that relate to the Legal Tender Acts.

Thus, in *Bronson v. Rodes* it was said by the Court that special coin contracts were legal and could only be paid in coin according to their terms.

7 *Wall.*, *229.*

This was said again in *Butler v. Horwitz*, 7 *Wall.*, 258.

And again in *Trebilcock v. Wilson.* 12 *Wall.*, 695.
And in *The Legal Tender Cases.* 12 *Wall.*, 549.

The distinction was clearly made in the *Legal Tender Case* (*110 U. S., 449*), it being said by Mr. Justic Gray in delivering the opinion of the court: "A contract to pay a certain sum of money, without any stipulation as to the kind of money in which it shall be paid, may always be satisfied by payment of that sum in any currency which is lawful money at the place and time at which payment is to be made."

Pre-existing coin contracts were not excepted from the operation of the act of Congress upon the theory or idea that Congress could not by legislation impair the obligation of contracts, but upon construction of the Federal Statutes. It was not the intention of Congress to convert pre-existing coin contracts into contracts payable generally in any legal tender, nor to bring special coin contracts made subsequently, within the operation of the law.

The time when such special contracts were made, whether before or after the passage of the act of Congress, was an immaterial consideration in the interpretation of the powers of Congress as expressed in the Legal Tender Acts.

There is nothing in any act of Congress forbidding the making of special gold contracts payable in gold coin. The act of Congress of March 3, 1863, (*12 Stat., 119*) recognizes the validity of contracts for the delivery of gold.

Custom dues, payable in gold coin, could not be paid unless parties were able to contract for or purchase gold. Such contracts are not only legal, but indispensable to the collection of the import duties of the Government.

It is respectfully submitted, that there has been a general acceptance of the decisions of this Court,

as in the Legal Tender cases as holding the doctrine that special coin contracts are legal, and that they are payable according to their terms in coin. Such contracts are commonly made in the various States, and the most important commercial transactions are based on gold coin.

Finally, I submit to the Court, that no Federal question is involved in the decision of the State Court. It rests entirely upon the construction of the local State statute, and the sole inquiry i respect to the extent of the power or authority conferred upon the Levee Board by the Legislature of the State.

It is, therefore, submitted respectfully, that this Court has no jurisdiction, and the case should be dismissed. But in any view, the decision of the State court should be affirmed, as it denies no right of the plaintiff's in error claimed under Federal authority, and as it involves merely the construction of a local statute.

FRANK JOHNSTON,
Attorney General of Mississippi.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

AMOS WOODRUFF, TRUSTEE, *et al.*,
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Brief for Plaintiffs in Error on Reargument.

CALDERON CARLISLE.
Of Counsel.

MARCELLUS GREEN,
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Attorneys for Plaintiffs in Error.

Pearson Printing Office, 9th & D Sts.

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A motion to dismiss for want of jurisdiction having been argued, was postponed to be heard with the merits. The cause, both on the motion to dismiss and on the merits, was argued before eight Justices at October Term, 1892, and by the court ordered to be reargued before a full bench. There has been no special assignment, and the case comes before the court on the regular call.

No additional briefs have been filed, except one for the State of Mississippi by its new Attorney-General, Honorable Frank Johnston, who argued the case at the former hearing as counsel for the Delta and Pine Land Company, one of the defendants herein.

INTRODUCTION.

As the court was informed in the oral argument at October term, 1892, this case does not necessarily bring on the judicial stage the great drama of the legal-tender

cases; it is nevertheless a continuation of it in the less dignified form of an afterpiece.

If the great debate cannot with propriety be reopened in this case, its legitimate result may at least be closely defined and rigidly restrained.

The legal-tender acts themselves, as always declared by this court, distinctly admitted the continued existence of gold coin as money, and never prevented money contracts from being expressly made in gold coin; indeed, the exceptions in these acts themselves made it necessary that persons, natural or artificial, private or municipal, should be left with the power to contract expressly to pay or be paid gold coin of the United States. It has never by the legislative or judicial branch of the Federal government been denied that "gold coin" was "money," and that it was lawful for governments—Federal or State—and for individuals to contract for the payment and receipt of "gold coin" as "money."

When the legal-tender acts first came before this court (Hepburn *v.* Griswold, 8 Wall. 603) the great war Secretary of the Treasury, who had been, to use his own language in his dissent in the later cases, (12 Wall. p. 457,) "charged with the anxious and responsible duty of providing funds for the prosecution of the war," was the Chief Justice of the United States; as a jurist he could not uphold the acts which he had assisted in administering in a time of great national peril, and in his luminous dissenting opinion (12 Wall. p. 457) he successfully showed that he had always doubted the power of the government to make a promise to pay the very coin of payment—to make a promise its own fulfilment.

The learned and able opinion (The Legal Tender Cases, 12 Wall. 457) in which Mr. Justice Strong, speaking for the majority of this court, reversed its former decision and upheld the legal-tender acts, in its spirit and result, chiefly justified the power by the exigency, and the dis-

senting opinions preserve a great record of the contrary view.

When last the legal-tender acts again came before this court, and the reissue, in time of peace, of legal-tender notes was sought to be be declared unconstitutional, (Juillard *v.* Greenman, 110 U. S. ,) the learned opinion of Mr. Justice Gray justified the legal tender character of the reissue as the exercise of an inherent sovereign power of the Federal government, warranted by the Constitution—but no one ever said that "gold coin" was not "money"—and it has never been said in this court, except in a dissenting opinion, that a contract payable expressly in coin was not a lawful contract, which must be paid in coin.

There was but one dissent in the last case, that of Mr. Justice Field—Chase, Clifford, and Nelson had passed away, and the chances of life and death now leave Mr. Justice Field the sole survivor of the bench which heard and decided the first great case—and with Mr. Justice Harlan and Mr. Justice Gray the only survivors of the last legal tender case. The only Justices who dissented from the gold coin cases (Miller and Bradley) are no more.

This case, then, comes before a court which has justified the legal-tender acts, first as a war measure, and then as a great inherent sovereign power of the Federal government, which has never gone one step beyond this, and which has repeatedly refused to interfere with the sanctity of private money contracts where the application of the great principles above mentioned was not absolutely necessary.

This cause comes before a tribunal which finally construes the Constitution and the laws of the United States. It is a case where a State court, under the guise of the construction of a State statute, has decided that a contract to pay "gold coin" is void, because the State statute only authorized the borrowing of "money." If gold coin was money, the bond in question here acknowledged a

debt in money and promised to pay money. The laws of the United States say, and have always said, that gold coin is money. The Mississippi State court says it is not money; that an authority to borrow money does not include the power to borrow any kind of money; that an authority to issue bonds of a denomination of so many dollars, and without limitation as to the kind of dollars, does not give power to issue bonds payable in gold coin of the United States, and that bonds so issued under the authority to borrow money, complying with all express restrictions, are absolutely void, because they did not specify that they were to be paid in dollars generally, or in the cheapest kind of dollars, but promised payment of principal expressly in gold coin of the United States, while the interest was to be paid in currency.

Statement.

The bill in this case sought to enforce in a court of equity the rights and remedies created by a statute of the State of Mississippi of the 17th of March, 1871, which impressed upon certain lands and funds a trust for the payment of the debt authorized by said statute to be incurred for a pressing public need by a corporation created to meet that need. (Rec. p. 35.)

The bill alleged that by certain subsequent acts of the State of Mississippi, the legislative contract above referred to had been impaired; that under these subsequent acts conflicting rights and titles in the lands subject to the trust had been acquired, and that the trust funds had been diverted from the purposes of the trust. (Rec. p. 44.)

The bill prayed that these subsequent acts be declared unconstitutional and void, and that the trust created by the act of March 17, 1871, be enforced against the lands and funds designated in said act, and that to that end all necessary accounts should be taken.

The legislative contract made by the act of 1871 was

not simply to issue bonds of a certain character and amount, but included within its obligatory scope remedies for the creditors who dealt on the faith of it, pledges of lands and funds to secure the repayment of money which should be lent under the contract. It authorized expressly the corporation created under the act to "BORROW MONEY" to an amount not exceeding one million of dollars, and to issue bonds which should be negotiable as bills of exchange or promissory notes, either in or out of the State. This was the general purpose and scope of the act.

In addition to the limit of one million of dollars to the loan there were other restrictions carefully imposed. The bonds were to be in denominations of not less than one hundred dollars; they were to mature not before two years or after ten; they were to bear interest at a rate not exceeding eight per cent.; they were to be negotiated at a discount not greater than ten per cent. Under this authority the board of commissioners of levee district No. 1, the corporation designated in the act, issued bonds—it does not appear to what amount—payable in gold coin of the United States of America, with coupons payable in currency of the United States, this form of bond being presumably rendered necessary by the express requirement to negotiate at a discount of not more than ten per cent. and under an unlimited and unqualified power to borrow money, which could only mean money of the United States.

The State appears to have gotten the benefit of the proceeds of the bonds issued, but never to have paid principal or interest. The corporation created does not appear to have faithfully administered the trust as to the lands and funds created by the act.

On the 11th of April, 1876, the legislature of Mississippi passed an act entitled, "An act to abolish the levee board of district No. 1, and to pay the debts of said board," and providing that the auditor of public accounts and the treasurer of the State be constituted and appointed the

levee board of district No. 1, *ex officio*, and discharge all the duties of the levee board and of the secretary and treasurer of the same.

This act was held by this court in the case of Hemmingway *v.* Stansell, (106 U. S. 402,) not to dissolve or extinguish the corporation, but merely to substitute the State treasurer and auditor of accounts as the members of that corporation.

This court also, in the case just cited, upheld the negotiation of a large amount of the very same issue of bonds in question in this suit directly to a contractor at ninety cents on the dollar. This decision was rendered at the October term, 1882. Later the legislature of Mississippi in 1884 forever abolished the board and dissolved it, "without power of revivor or succession of any kind whatsoever."

The State legislature having, as it is claimed in the bill, sought to extinguish the trusts on the lands, and to divert the trust funds, made applicable to the payment of the debt contracted under the act of March 17, 1871, the State court meets the complaint in a court of conscience that the State has unlawfully and unconstitutionally impaired the obligation of a contract, and destroyed its remedies by holding the complainants' bonds absolutely void, and on this ground dismisses their bill, and refuses them all remedy and relief under the act of March 17, 1871. The court did not directly decide that the subsequent legislation of Mississippi did not impair the obligation of the legislative contract of 1871, but it indirectly upheld these acts, and the rights claimed by the defendants under them, and in effect justified the subsequent legislation by holding that there was NO CONTRACT under the act of March 17, 1871, because the bonds, otherwise strictly and exactly in accordance with the provisions of the act of March 17, 1871, and which had served the purpose of getting the creditors' money, contained what the Mississippi court thought an unauthorized condition,

namely: That they should be paid in gold coin of the United States, and that by reason of this condition they were not such a contract as could be impaired by subsequent legislation.

ARGUMENT.

Jurisdiction of this Court.

At the threshold of the case lies the question of the jurisdiction of this court heretofore raised by the motion to dismiss; the hearing on which motion has, as already stated, been postponed until now by the order of the court.

The view of the Federal question suggested by the *form* of the assignment of error has been discussed by the counsel for the plaintiff in error in the brief heretofore filed. There seem, however, to be two other points fairly within the substance of the assignment of error to which the attention of the court is respectfully invited.

I. *The first point is that a right and privilege under the laws of the United States making gold coin of the United States money and a legal tender in payment of all debts, public and private, without limit as to amount or character, was specially set up in the bill and denied by the State court.*

II. *The second point involves the consideration of the power of a State court to evade the constitutional supervision of this court by declaring that not to be a contract which was alleged by the complainant in the forms of legal proceedings to be one within the meaning of that clause of the Constitution which forbids States from passing any laws impairing the obligations of a contract, in effect upholding the invalid legislation of the State and justifying it on the ground that there was no contract to impair.*

I.

The laws of Congress and the decisions of this court make a contract for the payment of gold coin of the United

States a valid and enforceable contract. This was the law on March 17, 1871, and has ever been since.

Cheang Ku *v.* United States, 3 Wall. 320.
Bronson *v.* Rhodes, 7 Wall. 229.
Trebilock *v.* Wilson, 12 Wall. 689.

The laws of the United States long before and ever since 1871 made gold coin of the United States "money," and a legal tender in payment of all debts, public and private, without restriction as to the character or amount of the debt.

Acts of March 3, 1849; February 21, 1857; February 25, 1862; R. S. § 3585.

The legal-tender acts made a new kind of dollars; it has never been pretended that they destroyed the old. The word "money" in the Mississipi statute was insensible without reference to the Constitution and laws of the United States; there was no money of the State of Mississippi. If the authority to borrow money was to be limited to any particular kind of money, or if the State legislature desired to forbid the borrowing of any particular kind of money, they were at liberty, under the laws of the United States and the decisions of this court expounding them, to do so; but if they did not do so, it is the laws of the United States which determine what is "money," and the State court cannot, under the guise of construing a State statute, declare that the word "money" in a statute of one of the United States does not include gold coin of the United States, when the laws of Congress say that gold coin is money of the United States. The legislature of Mississippi was careful to restrict the other grants of power: the denomination of the bonds, the rate of interest, their maturity, the rate at which they were to be negotiated. It is not pretended that more than a million dollars of bonds were issued, or that the full million of bonds payable in gold coin were

ever issued. These complainants hold only three hundred thousand dollars of the bonds in question. The very bonds themselves show that the corporation considered both their powers and duties under the laws of the State and the laws of the United States to include the borrowing and promising to pay all kinds of lawful money, and nothing is more probable than that to obey the statute and negotiate the bonds at not more than ten per cent. discount, it was necessary to make the principal payable in gold coin, while the creditor was willing to accept his interest, in the interval, in currency.

See Pollard *v.* City of Pleasant Hill, 3 Dillon, 195.
Bank of Prince Edward's Island, 53 Barb. 459.

II.

It is for this court to say whether the contract alleged by the bill in this case *is* a contract, and whether the State of Mississippi has impaired the obligations of that contract; and the State court cannot evade the lawful review of its decision by holding that there is no contract, and stating that in doing so it is merely deciding a mere question of State municipal law.

"It has never been denied," says the court in Bank *v.* Skelly, (1 Bl. 436,) "nor is it now that the Supreme Court of the United States has an appellate power to revise the judgment of the Supreme Court of a State whenever such a court shall adjudge that not to be a contract which has been alleged in the forms of legal proceedings by a litigant to be one within the meaning of that clause of the Constitution of the United States which inhibits the States from passing any law impairing the obligation of contracts."

"This question by itself," says Mr. Justice Bradley, speaking for the court, (Given *v.* Wright, 117 U. S. 655,) "would be a mere question of State municipal law, and would not involve any appeal to the Constitution or laws

of the United States. But where it is charged that the obligation of a contract has been impaired by a State law, as in this case by the general tax law of New Jersey as administered by the State authorities, and the State courts justify such impairment by the application of some general rule of law to the facts of the case, it is our duty to inquire whether the justification is well grounded. If it is not, the party is entitled to the benefit of the constitutional protection."

The Merits.

If this court has jurisdiction of this case there can be but one result, the decree must be reversed and the cause remanded.

a. The bonds were only evidence of the contract; and even if there was any legal infirmity in them a court of equity could not refuse all remedy to the creditors seeking to enforce their rights against lands and funds, provided as security, and an accounting with the defendants.

b. Even if the condition on the face of the bonds making the principal payable in gold coin of the United States were void this would not avoid the bonds, and no court of equity could hold that, because a debtor had promised to pay a particular kind of dollars which he was not authorized to promise, the creditor had lost all right, and the debtor was absolved from all obligation.

c. The contract set up by the complainants herein is in effect the Mississippi act of March 17, 1871, and they are seeking in equity to enforce all their rights and remedies under it.

It will in further proceedings be the duty of the court below to enquire whether the subsequent legislation of the State under which the active defendants—a railroad company and a land company—claim, justifies their pretensions in whole or in part, to say whether that subse-

quent legislation has impaired the obligations of the contract of 1871, and to establish by proper accounting and decree the relative rights of the parties.

Conclusion.

It is respectfully submitted that the decree below must be reversed and the cause remanded.

CALDERON CARLISLE,
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Marcellus Green,
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OCTOBER TERM, 1894.

AMOS WOODRUFF, Trustee, *et al.*,
Plaintiffs in Error,
vs.
THE STATE OF MISSISSIPPI *et al.*,
Defendants in Error.

No. 66.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR THE LOUISVILLE, NEW ORLEANS AND TEXAS RAILROAD COMPANY, IN REPLY TO THE BRIEF FOR PLAINTIFFS IN ERROR ON REARGUMENT.

J. HUBLEY ASHTON,
Of Counsel for the Louisville, New Orleans and Texas Railroad Company.

Press of McGILL & WALLACE, 1107 E Street N. W.

Supreme Court of the United States.

OCTOBER TERM, 1894.

AMOS WOODRUFF, TRUSTEE, *et al.*
vs.
THE STATE OF MISSISSIPPI *et al.*
No. 66.

Brief for The Louisville, New Orleans and Texas Railroad Company, in Reply to the Brief for Plaintiffs in Error on Reargument.

The undersigned has been handed a copy of a Brief for the Plaintiffs in Error on reargument, which seeks to maintain the jurisdiction of the Court to review the decree below dismissing the bill, in this case, upon two grounds:

I. That a right and privilege under the laws of the United States making gold coin of the United States money and a legal tender in payment of all debts, was specially set up in the bill and denied by the State Court.

II. That a State court can not evade the constitutional supervision of this Court by declaring that not to be a contract which was alleged by the complainant to be one within the meaning of that clause of the Con-

stitution which forbids States from passing laws impairing the obligations of contracts; in effect, upholding the invalid legislation of the State and justifying it on the ground that there was no contract to impair.

These propositions, we apprehend, must be deemed to express the final theory, on the part of the plaintiffs in error, of the supposed jurisdiction of this Court over the decree below.

A few observations on each point may be serviceable to the Court.

I.

The first cause of demurrer to the bill, as assigned by defendants, was, that the Act of March 17, 1871, authorized "the Levee Board to 'borrow money,' and to that end to issue '*the bonds of said Board to the amount of one million dollars*,' but did not empower them to issue bonds calling for the payment of amounts acknowledged in '*gold coin of the United States*,' thereby largely increasing the debt of the District." (See demurrers, Record, p. 65, fol. 58; p. 67, fol. 60.)

The court below sustained this ground of demurrer, and dismissed the bill. It said: "This is decisive of this case, and renders unnecessary, if not improper, the consideration of any other question." (*Ib.*, p. 75.)

The court below, in sustaining the first ground of demurrer, and adjudging that the so-called bonds were void, *ab initio*, simply recognized and applied the settled principle of American jurisprudence, that a special corporate agency for municipal purposes, like this Levee Board No. 1, has no power to issue *negotiable bonds* except by legislative permission; that the Legislature in granting permission to such a corporate body to issue such bonds, may impose such con-

ditions and restrictions as it may choose; and that such legislative permission does not carry with it authority to execute negotiable bonds, except subject to the conditions, restrictions, and directions of the enabling act.

No court has had occasion to declare and apply these well-settled principles of the law of municipal and civil corporations, acting as auxiliaries of the State, more frequently than this Court.

They were stated and applied by this Court in the recent case of *Barnum* v. *Okolona*, on writ of error to the District Court of the United States for the Northern District of Mississippi (148 U. S., 393, 395), in which it was adjudged that negotiable bonds of the Town of Okolona, in that State, issued, or purporting to be issued, by that Town, under an act of the Legislature of Mississippi, of March 25, 1871, to aid in the construction of the Grenada, Houston and Eastern Railroad, were absolutely *void*, because they had more than ten years to run, while the enabling Act prescribed that the bonds to be issued under it should not extend beyond ten years from the date of their issuance.

The Court deemed the limitation of ten years for the running of the bonds a condition of and restriction upon the power to issue bonds, and in holding the bonds before it, in that case, *void*, the Court came to the same conclusion as that previously reached by the Supreme Court of Mississippi in the case of *Amos Woodruff* v. *Okolona*, decided in 1880, which was a suit upon the coupons, and involved the validity, of the same issue of bonds. (57 Mississippi, 806.)

This Court followed and in effect affirmed in that case the earlier decision of the Supreme Court of Mississippi.

Mr. Justice Shiras, who delivered the opinion of the Court in *Barnum* v. *Okolona*, cited as authority for the

principles upon which the bonds there involved were pronounced to be absolutely void, the following cases: *Sheboygan County* v. *Parker*, 3 Wall., 93, 96; *Wells* v. *Supervisors*, 102 U. S., 625; *Claiborne County* v. *Brooks*, 111 U. S., 400; *Young* v. *Clarendon Township*, 132 U. S., 340, 346; *Norton* v. *Dyersburg*, 127 U. S., 160; *Brenham* v. *German-American Bank*, *144 U. S.*, *173*, *188*.

The Court, in all those cases, regarded the power to issue *for sale, in open market, a bond as a commercial security, with immunity, in the hands of a bona-fide holder for value, from equitable defenses*, as a special and extraordinary power, which must be exercised in strict conformity with the terms of the enabling Act. As was said by Mr. Justice Lamar, speaking for the Court, in *Young* v. *Clarendon Township* (132 U. S., 347), "all the questions concerning the execution of the bonds in controversy must be referred to that statute, *tested by it, and decided in strict conformity with its terms. It is an enabling Act, conferring power not before existent, and any departure from its requirements can not be allowed.*"

This Court, also, in the very recent case of *Hedges* v. *Dixon* (150 U. S., 182–192), in which its judgment was delivered by Mr. Justice Jackson, conclusively determined that where municipal bonds had been issued by a county in excess of its authority, the holders could not, by an offer to surrender and cancel so much of such bonds as might be found to exceed the limit authorized by law, invest a court of equity with jurisdiction to ascertain the amount of such excess, and declare the residue valid, and enforce the payment thereof against the county.

The Court, in that case, said:

"The principle running through these decisions controls the case under consideration, and clearly establishes that the complainants are not entitled to the relief they seek. The fact that the complainants have no remedy at law, arising from the invalidity of the bonds, confers no jurisdiction upon a Court of Equity to afford them relief. The established rule, although not of universal application, is, that equity follows the law, or, as stated in *Magniac* v. *Thomson*, 15 How., 281, 299, 'that whenever the rights or the situation of the parties are clearly defined and established by law, equity has no power to change or unsettle those rights or that situation, but in all such instances the maxim *equitas sequitur legem* is strictly applicable.'

"Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law. They are bound by positive provisions of a statute equally with courts of law, and where the transaction, or the contract, is declared void because not in compliance with express statutory or constitutional provision, a court of equity can not interpose to give validity to such transaction or contract, or any part thereof."

The Supreme Court of Mississippi, in determining whether or not upon the true legal construction of the Act of 1871, the Levee Board was authorized to make and utter these negotiable gold bonds, had the right and was obliged to read and construe the provisions of that Act in the light shed upon them by the great public facts as to the state of the money and currency of the country at the date of the Act. (United States *v.* Union Pacific R. R. Co., 91 U. S., 79; Aldridge *v.* Williams, 3 H., 24.)

The Court was bound to know, what the Legislature of Mississippi knew, when it passed the Act, in 1871, that there were *then* two descriptions of "dollars" in the country, both equally lawful, though essentially unlike in nature, and of different values, and that the dol-

lars of lesser value had become the "*universal measure of values*," as stated by Mr. Justice Strong, in delivering judgment in the *Legal Tender Cases*, at December Term, 1870; so that a contract, made in 1871, calling for the payment of a certain number of dollars in *gold coin* of the United States, was not "*distinguishable in principle from a contract to deliver an equal weight of* BULLION *of equal fineness.*" (Bronson *v.* Rodes, 7 Wall., 250; Trebilcock *v.* Wilson, dissenting Opinion of Mr. Justice Bradley, 12 Wall., 699; see, also, Gregory *v.* Morris, 96 U. S., 624.)

Chief-Justice Chase, speaking for the Court, at December term, 1868, in *Bronson* v. *Rodes* (7 Wall., 250), said:

"Payment of money is delivery by the debtor to the creditor of the amount due. A contract to pay a certain number of dollars in gold or silver coins is, therefore, in legal import, nothing else than an agreement to deliver *a certain weight of standard gold, to be ascertained by a count of coins, each of which is certified to contain a definite proportion of that weight.* It is not distinguishable, as we think, in *principle*, from a contract to deliver *an equal weight of bullion of equal fineness.* It is distinguishable, in circumstance, only by the fact that the sufficiency of the amount to be tendered in payment must be ascertained, in the case of *bullion*, by assay and the scales, while in the case of *coins* it may be ascertained by count."

Mr. Justice Bradley, in his dissenting opinion in *Trebilcock* v. *Wilson*, at December term, 1871 (12 Wall., 699), expressed the same view with respect to contracts for the payment of gold coin of the United States made *after the passage of the legal-tender acts.*

Construing the provisions of the Act of 1871, in the light of such public facts as these in regard to the national currency, at the date of the enactment, the Supreme Court of Mississippi determined that it was

not the intention or purpose of the Legislature to confer upon the Levee Board the special and extraordinary power to make and utter negotiable securities payable by these express terms, exclusively, in *specie*, then a *commodity* subject to market prices, which were not distinguishable in principle, as said by this Court, from contracts to deliver an equal weight of *bullion* of equal fineness with the promised specie.

In other words, the Court below was of opinion that the power conferred on the Levee Board by the enabling Act was intended to be limited and restricted to the making and uttering of negotiable bonds which were, by their express terms, payable in "*dollars*" generally, and was not designed or meant by the Legislature to extend to the putting upon the market public securities which in no respect differed in principle from *special contracts for bullion*, and that the bonds, as made and issued by the Board, were, therefore, void, agreeably to the settled doctrines of the Supreme Court of Mississippi.

It is clear, therefore, that the Court below, in adjudging that the bonds, so called, were void, as *without the authority of the enabling Act*, did not determine any Federal question, nor decide against any right or privilege specially claimed or set up by the plaintiffs in error, in the suit, under the Legal Tender Acts, within any meaning of Section 709 of the Revised Statutes.

Miller's Exs. *v.* Swann, 150 U. S., 132;
Eustis *v.* Bolles, 150 U. S., 361;
Schuyler Bank *v.* Bollong, 150 U. S., 85–88;
Powell *v.* Brunswick Co., 150 U. S., 433–440;
Duncan *v.* Missouri, 152 U. S., 377–383;
Snell *v.* Chicago, 152 U. S., 198.

The rulings of the Court in these recent cases would seem to conclude this question of jurisdiction.

The case of *Miller's Executors* v. *Swann* (*supra*), in which Mr. Justice Brewer delivered the opinion of the Court, is of interest in this connection.

In that case there was a grant by Congress of lands to the State of Alabama to aid in the construction of railroads. The Act of Congress authorized the sale of the lands upon a certificate by the Governor of the State to the Secretary of the Interior certifying to the construction of certain portions of a railroad. By an Act of the State of 1870, a beneficiary company was given authority to sell its lands in accordance with the Act of Congress. The Supreme Court of Alabama held that, under the Act of 1870, the Company had no power to sell the lands involved until the making of the certificate mentioned in the Act of Congress.

Mr. Justice Brewer, in dismissing the case, said :

"The Supreme Court, in its first opinion, held that, under the Act of 1870, and the reservation in the mortgage, the Railroad Company had absolutely no power to sell until the making of that certificate ; and that any attempted sale made prior thereto was a nullity, not voidable, but absolutely void. Now, whether that was a correct construction or not of the Act of 1870, and the reservation of the mortgage, is a purely local question, and involves nothing of a Federal character. The question is not what rights passed to the State under the acts of Congress, but what authority the Railroad Company had under the statute of the State. The construction of such a statute is a matter for the State court, and its determination thereof is binding upon this court. *The fact that the State statute and the mortgage refer to certain Acts of Congress as prescribing the rule and measure of the rights granted by the State, does not make the determination of such rights a Federal question.* A State may prescribe the procedure in the Federal courts as a rule of practice in its own tribunals ; it may authorize the disposal of its own lands in accordance with the provisions for the sale of the public lands of the United States ; and in such cases an examination may be neces-

sary of the acts of Congress, the rules of the Federal courts, and the practices of the Land Department; and yet the questions for decision would not be of a Federal character. *The inquiry along Federal lines is only incidental to a determination of the local question of what the State has required and prescribed. The matter decided is one of State rule and practice. The facts by which that State rule and practice are determined may be of a Federal origin.*"

So here, it may be said, the *facts*, in the light of which the Court below construed the State statute, and determined that it conferred no *power* on this Levee Board to put upon the money markets of the world negotiable *gold bonds*, were of Federal origin, but they did not inject into the case a Federal question.

"The inquiry along Federal lines," in the language of Mr. Justice Brewer, was only "incidental to a determination of the local question of what the State had required and prescribed."

II.

As to the second point of the learned counsel for the plaintiffs in error, on reargument, it is quite clear that the Court below, when it dismissed the bill, did *not* give effect to or uphold in any manner any State law, passed after the enabling Act of 1871, the validity of which was impugned, in the bill, as impairing the obligation of the alleged contracts, and that this Court, therefore, will not consider the question whether such contracts exist, as claimed by the plaintiffs in error, and whether the State laws referred to, or either or any of them, impair or impairs their obligation.

The principle is clearly stated by Mr. Justice Gray, delivering judgment in *Huntington* v. *Attrill* (146 U. S., 657, 684), as follows:

"The case, in this regard, is analogous to one arising under the clause of the Constitution which forbids a State to pass any law impairing the obligation of contracts, in which, if the highest Court of State decides nothing but the original construction and obligation of a contract, this Court has no jurisdiction to review its decision; but if the State Court gives effect to a subsequent law, which is impugned as impairing the obligation of a contract, this Court has power, in order to determine whether any contract has been impaired, to decide for itself what the true construction of the contract is."

III.

The suggestion was made on the former argument that possibly the decision below upon the interpretation of the State statute, involved the legal proposition that contracts made payable, by their terms, in gold coin since the Legal Tender Acts, are solvable only in gold coin; but the arguments addressed to the Court in the Briefs already on file, would seem to be sufficient to show that the Court below decided nothing whatever upon the construction or effect of the Legal Tender Acts, and, further, that if it should be thought that the decision necessarily involved the proposition mentioned, the proposition is entirely correct.

One or two additional observations, however, may be made here.

Mr. Justice Bradley and Mr. Justice Miller were the only Justices who dissented from the opinion of the Court, delivered by Mr. Justice Field, in the leading case of *Trebilcock* v. *Wilson*, at the December Term, 1871, in which the Court reaffirmed *Bronson* v. *Rodes*, and held that the Act of February 25, 1862, "was not intended to interfere in any respect with *existing* or *subsequent* contracts payable by their express terms in specie; and that when it declares that the notes of the United States shall be lawful money, and a legal tender

for all debts, it means for all debts which are payable in *money generally*, and not obligations payable in commodities, or obligations of any other kind." (12 Wall., 697.)

Mr. Justice Bradley dissented from this view only so far as contracts for specie made *before* the Legal Tender Acts were concerned. As respects contracts for specie made *since* those acts went into operation, that learned Justice was of opinion that they were to be considered contracts for bullion, and as such performable according to their specific terms. (12 Wall., 699.)

Mr. Justice Miller simply stated that he adhered to his opinion in *Bronson* v. *Rodes*.

The subject was before the Court in *Gregory* v. *Morris*, at October Term, 1877. (96 U. S., 619, 625)

That case involved a contract, made in *1873*, for the sale by Morris to Gregory of certain cattle, in Texas, according to a schedule of prices in *gold coin* of the United States.

It was a suit in replevin and for damages for the wrongful detention of the property by Gregory against Morris, in which the latter also claimed damages.

Gregory, who had made the contract to pay gold, asked the court below to instruct the jury, as follows:

"That no agreement or contract to pay a certain number of dollars in gold can be enforced. The national currency is by law a legal tender at its face value for all debts and demands, public or private, except duties on imports and interest on the public debt."

This Court, Chief-Justice Waite delivering its opinion, held that the instruction asked was in conflict with *Bronson* v. *Rodes*, and was, therefore, properly refused by the Court below.

The contract, in that case, was made subsequent to the passage of the Legal Tender Acts, and was treated